

MORTGAGE REFORM AND ANTI-PREDATORY LENDING
ACT OF 2007

NOVEMBER 9, 2007.—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

ADDITIONAL AND DISSENTING VIEWS

[To accompany H.R. 3915]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3915) to amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to establish licensing and registration requirements for residential mortgage originators, 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.

CONTENTS

	Page
Amendment	2
Purpose and Summary	35
Background and Need for Legislation	36
Hearings	38
Committee Consideration	42
Committee Votes	42
Committee Oversight Findings	49
Performance Goals and Objectives	49
New Budget Authority, Entitlement Authority, and Tax Expenditures	50
Committee Cost Estimate	50
Congressional Budget Office Estimate	50
Federal Mandates Statement	55
Advisory Committee Statement	55

Constitutional Authority Statement 56
 Applicability to Legislative Branch 56
 Earmark Identification 56
 Section-by-Section Analysis of the Legislation 56
 Changes in Existing Law Made by the Bill, as Reported 58
 Additional and Dissenting Views..... 107, 111

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 of 2007”.

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

Sec. 1. Short title; table of contents.

TITLE I—RESIDENTIAL MORTGAGE LOAN ORIGINATION

Subtitle A—Licensing System for Residential Mortgage Loan Originators

- Sec. 101. Purposes and methods for establishing a mortgage licensing system and registry.
- Sec. 102. Definitions.
- Sec. 103. License or registration required.
- Sec. 104. State license and registration application and issuance.
- Sec. 105. Standards for State license renewal.
- Sec. 106. System of registration administration by Federal banking agencies.
- Sec. 107. Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system.
- Sec. 108. Backup authority to establish a nationwide mortgage licensing and registry system.
- Sec. 109. Fees.
- Sec. 110. Background checks of loan originators.
- Sec. 111. Confidentiality of information.
- Sec. 112. Liability provisions.
- Sec. 113. Enforcement under HUD backup licensing system.

Subtitle B—Residential Mortgage Loan Origination Standards

- Sec. 121. Definitions.
- Sec. 122. Residential mortgage loan origination.
- Sec. 123. Anti-steering.
- Sec. 124. Liability.
- Sec. 125. Regulations.

TITLE II—MINIMUM STANDARDS FOR MORTGAGES

- Sec. 201. Ability to repay.
- Sec. 202. Net tangible benefit for refinancing of residential mortgage loans.
- Sec. 203. Safe harbor and rebuttable presumption.
- Sec. 204. Liability.
- Sec. 205. Defense to foreclosure.
- Sec. 206. Additional standards and requirements.
- Sec. 207. Rule of construction.
- Sec. 208. Effect on State laws.
- Sec. 209. Regulations.
- Sec. 210. Amendments to civil liability provisions.
- Sec. 211. Required disclosures.
- Sec. 212. Authorization of appropriations.
- Sec. 213. Effective date.

TITLE III—HIGH-COST MORTGAGES

- Sec. 301. Definitions relating to high-cost mortgages.
- Sec. 302. Amendments to existing requirements for certain mortgages.
- Sec. 303. Additional requirements for certain mortgages.
- Sec. 304. Amendment to provision governing correction of errors.
- Sec. 305. Regulations.
- Sec. 306. Effective date.

TITLE IV—OFFICE OF HOUSING COUNSELING

- Sec. 401. Short title.
- Sec. 402. Establishment of Office of Housing Counseling.
- Sec. 403. Counseling procedures.
- Sec. 404. Grants for housing counseling assistance.
- Sec. 405. Requirements to use HUD-certified counselors under HUD programs.
- Sec. 406. Study of defaults and foreclosures.
- Sec. 407. Definitions for counseling-related programs.
- Sec. 408. Updating and simplification of mortgage information booklet.

TITLE V—MORTGAGE DISCLOSURES UNDER REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

- Sec. 501. Universal mortgage disclosure in good faith estimate of settlement services costs.

TITLE I—RESIDENTIAL MORTGAGE LOAN ORIGINATION

Subtitle A—Licensing System for Residential Mortgage Loan Originators

SEC. 101. PURPOSES AND METHODS FOR ESTABLISHING A MORTGAGE LICENSING SYSTEM AND REGISTRY.

In order to increase uniformity, reduce regulatory burden, enhance consumer protection, and reduce fraud, the States, through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators, are hereby encouraged to establish a Nationwide Mortgage Licensing System and Registry for the residential mortgage industry that accomplishes all of the following objectives:

- (1) Provides uniform license applications and reporting requirements for State-licensed loan originators.
- (2) Provides a comprehensive licensing and supervisory database.
- (3) Aggregates and improves the flow of information to and between regulators.
- (4) Provides increased accountability and tracking of loan originators.
- (5) Streamlines the licensing process and reduces the regulatory burden.
- (6) Enhances consumer protections and supports anti-fraud measures.
- (7) Provides consumers with easily accessible information regarding the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators.

SEC. 102. DEFINITIONS.

For purposes of this subtitle, the following definitions shall apply:

(1) **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 National Credit Union Administration, and the Federal Deposit Insurance Corporation.

(2) **DEPOSITORY INSTITUTION.**—The term “depository institution” has the same meaning as in section 3 of the Federal Deposit Insurance Act and includes any credit union.

(3) **LOAN ORIGINATOR.**—

(A) **IN GENERAL.**—The term “loan originator”—

(i) means an individual who—

(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, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

(ii) includes any individual 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 individual can or will provide or perform any of the activities described in clause (i);

(iii) does not include any individual who performs purely administrative or clerical tasks and is not otherwise described in this subparagraph; and

(iv) 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 the person or entity is compensated by a lender, a mortgage broker, or other loan originator or by any agent of such lender, mortgage broker, or other loan originator.

(B) **OTHER DEFINITIONS RELATING TO LOAN ORIGINATOR.**—For purposes of this subsection, an individual “assists a consumer in obtaining or applying to obtain a residential mortgage loan” by, among other things, advising on loan terms (including rates, fees, other costs), preparing loan packages, or collecting information on behalf of the consumer with regard to a residential mortgage loan.

(C) **ADMINISTRATIVE OR CLERICAL TASKS.**—The term “administrative or clerical tasks” means the receipt, collection, and distribution of information common for the processing or underwriting of a loan in the mortgage industry and communication with a consumer to obtain information necessary for the processing or underwriting of a residential mortgage loan.

(D) REAL ESTATE BROKERAGE ACTIVITY DEFINED.—The term “real estate brokerage activity” means any activity that involves offering or providing real estate brokerage services to the public, including—

- (i) acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
- (ii) listing or advertising real property for sale, purchase, lease, rental, or exchange;
- (iii) providing advice in connection with sale, purchase, lease, rental, or exchange of real property;
- (iv) bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
- (v) negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property (other than in connection with providing financing with respect to any such transaction);
- (vi) engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a real estate agent or real estate broker under any applicable law; and
- (vii) offering to engage in any activity, or act in any capacity, described in clause (i), (ii), (iii), (iv), (v), or (vi).

(4) LOAN PROCESSOR OR UNDERWRITER.—

(A) IN GENERAL.—The term “loan processor or underwriter” means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of—

- (i) a State-licensed loan originator; or
- (ii) a registered loan originator.

(B) CLERICAL OR SUPPORT DUTIES.—For purposes of subparagraph (A), the term “clerical or support duties” may include—

- (i) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and
- (ii) communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms.

(5) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term “Nationwide Mortgage Licensing System and Registry” means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the State licensing and registration of State-licensed loan originators and the registration of registered loan originators or any system established by the Secretary under section 108.

(6) REGISTERED LOAN ORIGINATOR.—The term “registered loan originator” means any individual who—

- (A) meets the definition of loan originator and is an employee of a depository institution or a subsidiary of a depository institution; and
- (B) is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(7) RESIDENTIAL MORTGAGE LOAN.—The term “residential mortgage loan” means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling (as defined in section 103(v) of the Truth in Lending Act) or residential real estate upon which is constructed or intended to be constructed a dwelling (as so defined).

(8) SECRETARY.—The term “Secretary” means the Secretary of Housing and Urban Development.

(9) STATE-LICENSED LOAN ORIGINATOR.—The term “State-licensed loan originator” means any individual who—

- (A) is a loan originator;
- (B) is not an employee of a depository institution or any subsidiary of a depository institution; and
- (C) is licensed by a State or by the Secretary under section 107 and registered as a loan originator with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry.

(10) UNIQUE IDENTIFIER.—The term “unique identifier” means a number or other identifier that—

- (A) permanently identifies a loan originator; and

(B) is assigned by protocols established by the Nationwide Mortgage Licensing System and Registry and the Federal banking agencies to facilitate electronic tracking of loan originators and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.

SEC. 103. LICENSE OR REGISTRATION REQUIRED.

(a) **IN GENERAL.**—An individual may not engage in the business of a loan originator without first—

(1) obtaining and maintaining—

(A) a registration as a registered loan originator; or

(B) a license and registration as a State-licensed loan originator; and

(2) obtaining a unique identifier.

(b) **LOAN PROCESSORS AND UNDERWRITERS.**—

(1) **SUPERVISED LOAN PROCESSORS AND UNDERWRITERS.**—A loan processor or underwriter who does not represent 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 individual can or will perform any of the activities of a loan originator shall not be required to be a State-licensed loan originator or a registered loan originator.

(2) **INDEPENDENT CONTRACTORS.**—A loan processor or underwriter may not work as an independent contractor unless such processor or underwriter is a State-licensed loan originator or a registered loan originator.

SEC. 104. STATE LICENSE AND REGISTRATION APPLICATION AND ISSUANCE.

(a) **BACKGROUND CHECKS.**—In connection with an application to any State for licensing and registration as a State-licensed loan originator, the applicant shall, at a minimum, furnish to the Nationwide Mortgage Licensing System and Registry information concerning the applicant's identity, including—

(1) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and

(2) personal history and experience, including authorization for the System to obtain—

(A) an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(B) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) **ISSUANCE OF LICENSE.**—The minimum standards for licensing and registration as a State-licensed loan originator shall include the following:

(1) The applicant has not had a loan originator or similar license revoked in any governmental jurisdiction during the 5-year period immediately preceding the filing of the present application.

(2) The applicant has not been convicted, pled guilty or nolo contendere in a domestic, foreign, or military court of a felony during the 7-year period immediately preceding the filing of the present application.

(3) The applicant has demonstrated financial responsibility, character, and general fitness such as to command the confidence of the community and to warrant a determination that the loan originator will operate honestly, fairly, and efficiently within the purposes of this subtitle.

(4) The applicant has completed the pre-licensing education requirement described in subsection (c).

(5) The applicant has passed a written test that meets the test requirement described in subsection (d).

(c) **PRE-LICENSING EDUCATION OF LOAN ORIGINATORS.**—

(1) **MINIMUM EDUCATIONAL REQUIREMENTS.**—In order to meet the pre-licensing education requirement referred to in subsection (b)(4), a person shall complete at least 20 hours of education approved in accordance with paragraph (2), which shall include at least 3 hours of Federal law and regulations and 3 hours of ethics.

(2) **APPROVED EDUCATIONAL COURSES.**—For purposes of paragraph (1), pre-licensing education courses shall be reviewed, approved and published by the Nationwide Mortgage Licensing System and Registry.

(d) **TESTING OF LOAN ORIGINATORS.**—

(1) **IN GENERAL.**—In order to meet the written test requirement referred to in subsection (b)(5), an individual shall pass, in accordance with the standards established under this subsection, a qualified written test developed and administered by the Nationwide Mortgage Licensing System and Registry.

(2) **QUALIFIED TEST.**—A written test shall not be treated as a qualified written test for purposes of paragraph (1) unless—

- (A) the test consists of a minimum of 100 questions; and
- (B) the test adequately measures the applicant's knowledge and comprehension in appropriate subject areas, including—
 - (i) ethics;
 - (ii) Federal law and regulation pertaining to mortgage origination; and
 - (iii) State law and regulation pertaining to mortgage origination.

(3) **MINIMUM COMPETENCE.**—

(A) **PASSING SCORE.**—An individual shall not be considered to have passed a qualified written test unless the individual achieves a test score of not less than 75 percent correct answers to questions.

(B) **INITIAL RETESTS.**—An individual may retake a test 3 consecutive times with each consecutive taking occurring in less than 14 days after the preceding test.

(C) **SUBSEQUENT RETESTS.**—After 3 consecutive tests, an individual shall wait at least 14 days before taking the test again.

(D) **RETEST AFTER LAPSE OF LICENSE.**—A State-licensed loan originator who fails to maintain a valid license for a period of 5 years or longer shall retake the test, not taking into account any time during which such individual is a registered loan originator.

SEC. 105. STANDARDS FOR STATE LICENSE RENEWAL.

(a) **IN GENERAL.**—The minimum standards for license renewal for State-licensed loan originators shall include the following:

- (1) The loan originator continues to meet the minimum standards for license issuance.
- (2) The loan originator has satisfied the annual continuing education requirements described in subsection (b).

(b) **CONTINUING EDUCATION FOR STATE-LICENSED LOAN ORIGINATORS.**—

(1) **IN GENERAL.**—In order to meet the annual continuing education requirements referred to in subsection (a)(2), a State-licensed loan originator shall complete at least 8 hours of education approved in accordance with paragraph (2), which shall include at least 3 hours of Federal law and regulations and 2 hours of ethics.

(2) **APPROVED EDUCATIONAL COURSES.**—For purposes of paragraph (1), continuing education courses shall be reviewed, approved, and published by the Nationwide Mortgage Licensing System and Registry.

(3) **CALCULATION OF CONTINUING EDUCATION CREDITS.**—A State-licensed loan originator—

- (A) may only receive credit for a continuing education course in the year in which the course is taken; and
- (B) may not take the same approved course in the same or successive years to meet the annual requirements for continuing education.

(4) **INSTRUCTOR CREDIT.**—A State-licensed loan originator who is approved as an instructor of an approved continuing education course may receive credit for the originator's own annual continuing education requirement at the rate of 2 hours credit for every 1 hour taught.

SEC. 106. SYSTEM OF REGISTRATION ADMINISTRATION BY FEDERAL BANKING AGENCIES.

(a) **DEVELOPMENT.**—

(1) **IN GENERAL.**—The Federal banking agencies shall jointly develop and maintain a system for registering employees of depository institutions or subsidiaries of depository institutions as registered loan originators with the Nationwide Mortgage Licensing System and Registry. The system shall be implemented before the end of the 1-year period beginning on the date of the enactment of this Act.

(2) **REGISTRATION REQUIREMENTS.**—In connection with the registration of any loan originator who is an employee of a depository institution or a subsidiary of a depository institution with the Nationwide Mortgage Licensing System and Registry, the appropriate Federal banking agency shall, at a minimum, furnish or cause to be furnished to the Nationwide Mortgage Licensing System and Registry information concerning the employees's identity, including—

- (A) fingerprints for submission to the Federal Bureau of Investigation, and any governmental agency or entity authorized to receive such information for a State and national criminal history background check; and
- (B) personal history and experience, including—
 - (i) an independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and

(ii) information related to any administrative, civil or criminal findings by any governmental jurisdiction.

(b) **UNIQUE IDENTIFIER.**—The Federal banking agencies, through the Financial Institutions Examination Council, shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each registered loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and publicly adjudicated disciplinary and enforcement actions against loan originators.

(c) **CONSIDERATION OF FACTORS AND PROCEDURES.**—In establishing the registration procedures under subsection (a) and the protocols for assigning a unique identifier to a registered loan originator, the Federal banking agencies shall make such de minimis exceptions as may be appropriate to paragraphs (1)(A) and (2) of section 103(a), shall make reasonable efforts to utilize existing information to minimize the burden of registering loan originators, and shall consider methods for automating the process to the greatest extent practicable consistent with the purposes of this subtitle.

SEC. 107. SECRETARY OF HOUSING AND URBAN DEVELOPMENT BACKUP AUTHORITY TO ESTABLISH A LOAN ORIGINATOR LICENSING SYSTEM.

(a) **BACK UP LICENSING SYSTEM.**—If, by the end of the 1-year period, or the 2-year period in the case of a State whose legislature meets only biennially, beginning on the date of the enactment of this Act or at any time thereafter, the Secretary determines that a State does not have in place by law or regulation a system for licensing and registering loan originators that meets the requirements of sections 104 and 105 and subsection (d) or does not participate in the Nationwide Mortgage Licensing System and Registry, the Secretary shall provide for the establishment and maintenance of a system for the licensing and registration by the Secretary of loan originators operating in such State as State-licensed loan originators.

(b) **LICENSING AND REGISTRATION REQUIREMENTS.**—The system established by the Secretary under subsection (a) for any State shall meet the requirements of sections 104 and 105 for State-licensed loan originators.

(c) **UNIQUE IDENTIFIER.**—The Secretary shall coordinate with the Nationwide Mortgage Licensing System and Registry to establish protocols for assigning a unique identifier to each loan originator licensed by the Secretary as a State-licensed loan originator that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and the publicly adjudicated disciplinary and enforcement actions against loan originators.

(d) **STATE LICENSING LAW REQUIREMENTS.**—For purposes of this section, the law in effect in a State meets the requirements of this subsection if the Secretary determines the law satisfies the following minimum requirements:

(1) A State loan originator supervisory authority is maintained to provide effective supervision and enforcement of such law, including the suspension, termination, or nonrenewal of a license for a violation of State or Federal law.

(2) The State loan originator supervisory authority ensures that all State-licensed loan originators operating in the State are registered with Nationwide Mortgage Licensing System and Registry.

(3) The State loan originator supervisory authority is required to regularly report violations of such law, as well as enforcement actions and other relevant information, to the Nationwide Mortgage Licensing System and Registry.

(e) **TEMPORARY EXTENSION OF PERIOD.**—The Secretary may extend, by not more than 6 months, the 1-year or 2-year period, as the case may be, referred to in subsection (a) for the licensing of loan originators in any State under a State licensing law that meets the requirements of sections 104 and 105 and subsection (d) if the Secretary determines that such State is making a good faith effort to establish a State licensing law that meets such requirements, license mortgage originators under such law, and register such originators with the Nationwide Mortgage Licensing System and Registry.

(f) **LIMITATION ON HUD-LICENSED LOAN ORIGINATORS.**—Any loan originator who is licensed by the Secretary under a system established under this section for any State may not use such license to originate loans in any other State.

SEC. 108. BACKUP AUTHORITY TO ESTABLISH A NATIONWIDE MORTGAGE LICENSING AND REGISTRY SYSTEM.

If at any time the Secretary determines that the Nationwide Mortgage Licensing System and Registry is failing to meet the requirements and purposes of this subtitle for a comprehensive licensing, supervisory, and tracking system for loan originators, the Secretary shall establish and maintain such a system to carry out the purposes of this subtitle and the effective registration and regulation of loan originators.

SEC. 109. FEES.

The Federal banking agencies, the Secretary, and the Nationwide Mortgage Licensing System and Registry may charge reasonable fees to cover the costs of maintaining and providing access to information from the Nationwide Mortgage Licensing System and Registry to the extent such fees are not charged to consumers for access such system and registry.

SEC. 110. BACKGROUND CHECKS OF LOAN ORIGINATORS.

(a) **ACCESS TO RECORDS.**—Notwithstanding any other provision of law, in providing identification and processing functions, the Attorney General shall provide access to all criminal history information to the appropriate State officials responsible for regulating State-licensed loan originators to the extent criminal history background checks are required under the laws of the State for the licensing of such loan originators.

(b) **AGENT.**—For the purposes of this section and in order to reduce the points of contact which the Federal Bureau of Investigation may have to maintain for purposes of subsection (a), the Conference of State Bank Supervisors or a wholly owned subsidiary may be used as a channeling agent of the States for requesting and distributing information between the Department of Justice and the appropriate State agencies.

SEC. 111. CONFIDENTIALITY OF INFORMATION.

(a) **SYSTEM CONFIDENTIALITY.**—Except as otherwise provided in this section, any requirement under Federal or State law regarding the privacy or confidentiality of any information or material provided to the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 108, and any privilege arising under Federal or State law (including the rules of any Federal or State court) with respect to such information or material, shall continue to apply to such information or material after the information or material has been disclosed to the system. Such information and material may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without the loss of privilege or the loss of confidentiality protections provided by Federal and State laws.

(b) **NONAPPLICABILITY OF CERTAIN REQUIREMENTS.**—Information or material that is subject to a privilege or confidentiality under subsection (a) shall not be subject to—

(1) disclosure under any Federal or State law governing the disclosure to the public of information held by an officer or an agency of the Federal Government or the respective State; or

(2) subpoena or discovery, or admission into evidence, in any private civil action or administrative process, unless with respect to any privilege held by the Nationwide Mortgage Licensing System and Registry or the Secretary with respect to such information or material, the person to whom such information or material pertains waives, in whole or in part, in the discretion of such person, that privilege.

(c) **COORDINATION WITH OTHER LAW.**—Any State law, including any State open record law, relating to the disclosure of confidential supervisory information or any information or material described in subsection (a) that is inconsistent with subsection (a) shall be superseded by the requirements of such provision to the extent State law provides less confidentiality or a weaker privilege.

(d) **PUBLIC ACCESS TO INFORMATION.**—This section shall not apply with respect to the information or material relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, loan originators that is included in Nationwide Mortgage Licensing System and Registry for access by the public.

SEC. 112. LIABILITY PROVISIONS.

The Secretary, any State official or agency, any Federal banking agency, or any organization serving as the administrator of the Nationwide Mortgage Licensing System and Registry or a system established by the Secretary under section 108, or any officer or employee of any such entity, shall not be subject to any civil action or proceeding for monetary damages by reason of the good-faith action or omission of any officer or employee of any such entity, while acting within the scope of office or employment, relating to the collection, furnishing, or dissemination of information concerning persons who are loan originators or are applying for licensing or registration as loan originators.

SEC. 113. ENFORCEMENT UNDER HUD BACKUP LICENSING SYSTEM.

(a) **SUMMONS AUTHORITY.**—The Secretary may—

(1) examine any books, papers, records, or other data of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 107; and

(2) summon any loan originator referred to in paragraph (1) or any person having possession, custody, or care of the reports and records relating to such loan originator, to appear before the Secretary or any delegate of the Secretary at a time and place named in the summons and to produce such books, papers, records, or other data, and to give testimony, under oath, as may be relevant or material to an investigation of such loan originator for compliance with the requirements of this subtitle.

(b) EXAMINATION AUTHORITY.—

(1) IN GENERAL.—If the Secretary establishes a licensing system under section 107 for any State, the Secretary shall appoint examiners for the purposes of administering such section.

(2) POWER TO EXAMINE.—Any examiner appointed under paragraph (1) shall have power, on behalf of the Secretary, to make any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 107 whenever the Secretary determines an examination of any loan originator is necessary to determine the compliance by the originator with this subtitle.

(3) REPORT OF EXAMINATION.—Each examiner appointed under paragraph (1) shall make a full and detailed report of examination of any loan originator examined to the Secretary.

(4) ADMINISTRATION OF OATHS AND AFFIRMATIONS; EVIDENCE.—In connection with examinations of loan originators operating in any State which is subject to a licensing system established by the Secretary under section 107, or with other types of investigations to determine compliance with applicable law and regulations, the Secretary and examiners appointed by the Secretary may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.

(5) ASSESSMENTS.—The cost of conducting any examination of any loan originator operating in any State which is subject to a licensing system established by the Secretary under section 107 shall be assessed by the Secretary against the loan originator to meet the Secretary's expenses in carrying out such examination.

(c) CEASE AND DESIST PROCEEDING.—

(1) AUTHORITY OF SECRETARY.—If the Secretary finds, after notice and opportunity for hearing, that any person is violating, has violated, or is about to violate any provision of this subtitle, or any regulation thereunder, with respect to a State which is subject to a licensing system established by the Secretary under section 107, the Secretary may publish such findings and enter an order requiring such person, and any other person that is, was, or would be a cause of the violation, due to an act or omission the person knew or should have known would contribute to such violation, to cease and desist from committing or causing such violation and any future violation of the same provision, rule, or regulation. Such order may, in addition to requiring a person to cease and desist from committing or causing a violation, require such person to comply, or to take steps to effect compliance, with such provision or regulation, upon such terms and conditions and within such time as the Secretary may specify in such order. Any such order may, as the Secretary deems appropriate, require future compliance or steps to effect future compliance, either permanently or for such period of time as the Secretary may specify, with such provision or regulation with respect to any loan originator.

(2) HEARING.—The notice instituting proceedings pursuant to paragraph (1) shall fix a hearing date not earlier than 30 days nor later than 60 days after service of the notice unless an earlier or a later date is set by the Secretary with the consent of any respondent so served.

(3) TEMPORARY ORDER.—Whenever the Secretary determines that the alleged violation or threatened violation specified in the notice instituting proceedings pursuant to paragraph (1), or the continuation thereof, is likely to result in significant dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest prior to the completion of the proceedings, the Secretary may enter a temporary order requiring the respondent to cease and desist from the violation or threatened violation and to take such action to prevent the violation or threatened violation and to prevent dissipation or conversion of assets, significant harm to consumers, or substantial harm to the public interest as the Secretary deems appropriate pending completion of such proceedings. Such an order shall be entered only after notice and opportunity for a hearing, unless the Secretary determines that notice and hearing

prior to entry would be impracticable or contrary to the public interest. A temporary order shall become effective upon service upon the respondent and, unless set aside, limited, or suspended by the Secretary or a court of competent jurisdiction, shall remain effective and enforceable pending the completion of the proceedings.

(4) REVIEW OF TEMPORARY ORDERS.—

(A) REVIEW BY SECRETARY.—At any time after the respondent has been served with a temporary cease-and-desist order pursuant to paragraph (3), the respondent may apply to the Secretary to have the order set aside, limited, or suspended. If the respondent has been served with a temporary cease-and-desist order entered without a prior hearing before the Secretary, the respondent may, within 10 days after the date on which the order was served, request a hearing on such application and the Secretary shall hold a hearing and render a decision on such application at the earliest possible time.

(B) JUDICIAL REVIEW.—Within—

(i) 10 days after the date the respondent was served with a temporary cease-and-desist order entered with a prior hearing before the Secretary; or

(ii) 10 days after the Secretary renders a decision on an application and hearing under paragraph (1), with respect to any temporary cease-and-desist order entered without a prior hearing before the Secretary, the respondent may apply to the United States district court for the district in which the respondent resides or has its principal place of business, or for the District of Columbia, for an order setting aside, limiting, or suspending the effectiveness or enforcement of the order, and the court shall have jurisdiction to enter such an order. A respondent served with a temporary cease-and-desist order entered without a prior hearing before the Secretary may not apply to the court except after hearing and decision by the Secretary on the respondent's application under subparagraph (A).

(C) NO AUTOMATIC STAY OF TEMPORARY ORDER.—The commencement of proceedings under subparagraph (B) shall not, unless specifically ordered by the court, operate as a stay of the Secretary's order.

(5) AUTHORITY OF THE SECRETARY TO PROHIBIT PERSONS FROM SERVING AS LOAN ORIGINATORS.—In any cease-and-desist proceeding under paragraph (1), the Secretary may issue an order to prohibit, conditionally or unconditionally, and permanently or for such period of time as the Secretary shall determine, any person who has violated this subtitle or regulations thereunder, from acting as a loan originator if the conduct of that person demonstrates unfitness to serve as a loan originator.

(d) AUTHORITY OF THE SECRETARY TO ASSESS MONEY PENALTIES.—

(1) IN GENERAL.—The Secretary may impose a civil penalty on a loan originator operating in any State which is subject to licensing system established by the Secretary under section 107 if the Secretary finds, on the record after notice and opportunity for hearing, that such loan originator has violated or failed to comply with any requirement of this subtitle or any regulation prescribed by the Secretary under this subtitle or order issued under subsection (c).

(2) MAXIMUM AMOUNT OF PENALTY.—The maximum amount of penalty for each act or omission described in paragraph (1) shall be \$5,000 for each day the violation continues.

Subtitle B—Residential Mortgage Loan Origination Standards

SEC. 121. 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—
- “(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, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;
- “(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); and
- “(C) does not include any person who is 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.
- “(4) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term ‘Nationwide Mortgage Licensing System and Registry’ has the same meaning as in section 102(5) of the Mortgage Reform and Anti-Predatory Lending Act of 2007.
- “(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.
- “(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, or special purpose entity 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.”.

SEC. 122. 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 129 the following new section:

“§ 129A. Residential mortgage loan origination

“(a) 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, registered, and, when required, licensed as a mortgage originator in accordance with applicable State or Federal law including subtitle A of title I of the Mortgage Reform and Anti-Predatory Lending Act of 2007;

“(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;

“(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 the unique identifier of the originator provided by the Nationwide Mortgage Licensing System and Registry on all loan documents.

“(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 receives a net tangible benefit (as determined in accordance with regulations prescribed under section 129B(a)); 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 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 106 of the Mortgage Reform and Anti-Predatory Lending Act of 2007.”.

(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 item:

“129A. Residential mortgage loan origination.”.

SEC. 123. ANTI-STEERING.

Section 129A of the Truth in Lending Act (as added by section 122(a)) is amended by inserting after subsection (a) the following new subsection:

“(b) PROHIBITION ON STEERING INCENTIVES.—

“(1) IN GENERAL.—No mortgage originator may receive from any person, and no person may pay to any mortgage originator, directly or indirectly, any incentive compensation (including yield spread premium) that is based on, or varies with, the terms (other than the amount of principal) of any loan that is not a qualified mortgage (as defined in section 129B(c)(3)).

“(2) ANTI-STEERING 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;

“(ii) does not provide the consumer with a net tangible benefit; 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 129B(c)(3)) to a residential mortgage loan that is not a qualified mortgage; and

“(C) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age.

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

“(A) limiting or affecting the ability of a mortgage originator to sell residential mortgage loans to subsequent purchasers;

“(B) restricting a consumer’s ability to finance origination fees to the extent that such fees were fully disclosed to the consumer earlier in the application process and do not vary based on the terms of the loan or the consumer’s decision about whether to finance such fees; or

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

SEC. 124. LIABILITY.

Section 129A of the Truth in Lending Act is amended by inserting after subsection (b) (as added by section 123) the following new subsection:

“(c) 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 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. 125. REGULATIONS.

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

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 129A (as added by section 122(a)) the following new section:

“§ 129B. 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 be based on 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 take into consideration 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 take into consideration 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 129A (as added by section 122(b)) the following new item:

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

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

Section 129B 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 129B 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 or a qualified safe harbor mortgage.

“(2) REBUTTABLE PRESUMPTION.—Any presumption established under paragraph (1) with respect to any residential mortgage loan shall be rebuttable only—

“(A) against the creditor of such loan; and

“(B) if such loan is a qualified safe harbor mortgage.

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

“(A) MOST RECENT CONVENTIONAL MORTGAGE RATE.—The term ‘most recent conventional mortgage rate’ means the contract interest rate on commitments for fixed-rate first mortgages most recently published in the Federal Reserve Statistical Release on selected interest rates (daily or weekly), and commonly referred to as the H.15 release (or any successor publication), in the week preceding a date of determination for purposes of applying this subsection.

“(B) QUALIFIED MORTGAGE.—The term ‘qualified mortgage’ means—

“(i) any residential mortgage loan that constitutes a first lien on the dwelling or real property securing the loan and either—

“(I) has an annual percentage rate that does not equal or exceed the yield on securities issued by the Secretary of the Treasury under chapter 31 of title 31, United States Code, that bear comparable periods of maturity by more than 3 percentage points; or

“(II) has an annual percentage rate that does not equal or exceed the most recent conventional mortgage rate, or such other annual percentage rate as may be established by regulation under paragraph (6), by more than 175 basis points;

“(ii) any residential mortgage loan that is not the first lien on the dwelling or real property securing the loan and either—

“(I) has an annual percentage rate that does not equal or exceed the yield on securities issued by the Secretary of the Treasury under chapter 31 of title 31, United States Code, that bear comparable periods of maturity by more than 5 percentage points; or

“(II) has an annual percentage rate that does not equal or exceed the most recent conventional mortgage rate, or such other annual

percentage rate as may be established by regulation under paragraph (6), by more than 375 basis points; and
 “(iii) a loan made or guaranteed by the Secretary of Veterans Affairs.
 “(C) QUALIFIED SAFE HARBOR MORTGAGE.—The term ‘qualified safe harbor mortgage’ means any residential mortgage loan—

“⁽ⁱ⁾ for which the income and financial resources of the consumer are verified and documented;

“⁽ⁱⁱ⁾ for which the residential mortgage loan underwriting process is based on the fully-indexed rate, and takes into account all applicable taxes, insurance, and assessments;

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

“^(iv) meets such other requirements as may be established by regulation; and

“^(v) for which any of the following factors apply with respect to such loan:

“(I) The periodic payment amount for principal and interest are fixed for a minimum of 5 years under the terms of the loan.

“(II) In the case of a variable rate loan, the annual percentage rate varies based on a margin that is less than 3 percent over a single generally accepted interest rate index that is the basis for determining the rate of interest for the mortgage.

“(III) The loan does not cause the consumer’s total monthly debts, including amounts under the loan, to exceed a percentage established by regulation of his or her monthly gross income or such other maximum percentage of such income as may be prescribed by regulation under paragraph (6).

“(4) DETERMINATION OF COMPARISON TO TREASURY SECURITIES.—

“(A) IN GENERAL.—Without regard to whether a residential mortgage loan is subject to or reportable under the Home Mortgage Disclosure Act of 1975 and subject to subparagraph (B), the difference between the annual percentage rate of such loan and the yield on securities issued by the Secretary of the Treasury under chapter 31 of title 31, United States Code, having comparable periods of maturity shall be determined using the same procedures and methods of calculation applicable to loans that are subject to the reporting requirements under the Home Mortgage Disclosure Act of 1975.

“(B) DATE OF DETERMINATION OF YIELD.—The yield on the securities referred to in subparagraph (A) shall be determined, for purposes of such subparagraph and paragraph (3) with respect to any residential mortgage loan, as of the 15th day of the month preceding the month in which a completed application is submitted for such loan.

“(5) APR IN CASE OF INTRODUCTORY OFFER.—For purposes of making a determination of whether a residential mortgage loan that provides for a fixed interest rate for an introductory period and then resets or adjusts to a variable rate is a qualified mortgage, the determination of the annual percentage rate, as determined in accordance with regulations prescribed by the Board under section 107, shall be based on the greater of the introductory rate and the fully indexed rate of interest.

“(6) 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.—The Federal banking agencies may jointly prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage and a qualified safe harbor mortgage to the extent necessary and appropriate to effectuate the purposes of this subsection, to prevent circumvention or evasion of this subsection, or to facilitate compliance with this subsection.

“(7) RULE OF CONSTRUCTION.—No provision of this subsection may be construed as implying that a residential mortgage loan may be presumed to violate subsection (a) or (b) if such loan is not a qualified mortgage or a qualified safe harbor mortgage.”.

SEC. 204. LIABILITY.

Section 129B 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 (7), 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 shall be liable under paragraph (2) with respect to such loan if—

“(A) 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); or

“(B) each of the following conditions are met:

“(i) The assignee or securitizer—

“(I) has a policy against buying residential mortgage loans other than qualified mortgages or qualified safe harbor mortgages (as defined in subsection (c));

“(II) the policy is intended to verify seller or assignor compliance with the representations and warranties required under clause (ii); and

“(III) in accordance with regulations which the Federal banking agencies and the Securities and Exchange Commission shall jointly prescribe, exercises reasonable due diligence to adhere to such policy in purchasing residential mortgage loans, including through adequate, thorough, and consistently applied sampling procedures.

“(ii) The contract under which such assignee or securitizer acquired the residential mortgage loan from a seller or assignor of the loan contains representations and warranties that the seller or assignor—

“(I) is not selling or assigning any residential mortgage loan which is not a qualified mortgage or a qualified safe harbor mortgage; or

“(II) is a beneficiary of a representation and warranty from a previous seller or assignor to that effect,

and the assignee or securitizer in good faith takes reasonable steps to obtain the benefit of such representation or warranty.

“(4) 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 would have satisfied the requirements of subsection (a) and (b) if the loan had contained such terms as of the origination of the loan.

“(5) 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).

“(6) INABILITY TO PROVIDE RESCISSION.—If a creditor, assignee, or securitizer cannot provide 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 in-

curred as a result of the violation and in connection with obtaining a rescission of the loan, including a reasonable attorney's fee.

"(7) 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).

"(8) 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.

"(9) 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."

SEC. 205. DEFENSE TO FORECLOSURE.

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

"(e) 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), 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 129B of the Truth in Lending Act is amended by inserting after subsection (e) (as added by section 205) the following new subsections:

"(f) PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.—

"(1) PROHIBITED ON CERTAIN LOANS.—A residential mortgage loan that is not 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.

"(2) PROHIBITED AFTER INITIAL PERIOD ON LOANS WITH A RESET.—A qualified mortgage with a fixed interest rate for an introductory period that adjusts or resets after such period may 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.

"(g) 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 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.

“(h) 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.

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

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

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

“(j) EFFECT OF FORECLOSURE ON PREEXISTING LEASE.—

“(1) IN GENERAL.—In the case of any foreclosure on any dwelling or residential real property securing an extension of credit made under a contract entered into after the date of the enactment of the Mortgage Reform and Anti-Predatory Lending Act of 2007, any successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

“(A) any bona fide lease made to a bona fide tenant entered into before the notice of foreclosure; and

“(B) the rights of any bona fide tenant without a lease or with a lease terminable at will under State law and the provision, by the successor in interest, of a notice to vacate to the tenant at least 90 days before the effective date of the notice.

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

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

or

“(B) the lease or tenancy requires the tenant to pay rent that is not substantially less than fair market rent for the property.

“(k) MORTGAGES WITH NEGATIVE AMORTIZATION.—No creditor may extend credit to a first-time 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) the consumer 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) ANNUAL CONTACT INFORMATION.—At least once annually and whenever there is a change in ownership of a residential mortgage loan, the servicer with respect

to a residential mortgage loan shall provide a written notice to the consumer identifying the name 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."

(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 129A or 129B of the Truth in Lending Act (as added by this Act), no provision of such section 129A or 129B 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.—Section 129B(d) of the Truth in Lending Act (as added by section 204) shall supersede any State law that provides additional remedies against any assignee, securitizer, or securitization vehicle, and the remedies described in such section shall constitute the sole remedies against any assignee, securitizer, or securitization vehicle, for a violation of subsection (a) or (b) of section 129B of such Act (relating to ability to repay or net tangible benefit) or any other State law arising out of or relating to the specific subject matter of subsection (a) or (b) of such section 129B.

(b) RULE OF CONSTRUCTION.—No provision of this section shall be construed as limiting the application of any State law against a creditor. Nor shall any provision of this section be construed as limiting the application of any State law against any assignee, securitizer, or securitization vehicle that does not arise out of or relate to, or provide additional remedies in connection with, the specific subject matter of subsection (a) or (b) of section 129B of the Truth in Lending Act.

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";
- (3) by striking "\$200" and inserting "\$400";
- (4) by striking "\$2,000" and inserting "\$4,000"; and
- (5) 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. 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 an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable, or with respect to which the regular payments may otherwise be variable, in addition to the other disclosures required under this subsection, the disclosures provided under this subsection shall state the maximum amount of the regular required payments on the loan, based on the maximum interest rate allowed, introduced with the following language in conspicuous type size and format: 'Your payment

can go as high as \$ _____, the blank to be filled in with the maximum possible payment amount.

“(17) In the case of a residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurance, and assessments, the following statement: ‘Your payments will be increased to cover taxes and insurance. In the first year, you will pay an additional \$ _____ [insert the amount of the monthly payment to the account] every month to cover the costs of taxes and insurance.’

“(18) 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.

“(19) 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.

“(20) 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 based on the interest rate of the loan.”

(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-day period beginning on the date the application for the loan from a consumer is received by the creditor.”

(c) ENHANCED MORTGAGE LOAN DISCLOSURES.—Section 128(b)(2) of the Truth in Lending Act (15 U.S.C. 1638(b)(2)) is amended—

(1) by striking “(2) In the” and inserting the following:

“(2) MORTGAGE DISCLOSURES.—

“(A) IN GENERAL.—In the”;

(2) by striking “a residential mortgage transaction, as defined in section 103(w)” and inserting “any extension of credit that is secured by the dwelling of a consumer”;

(3) by striking “shall be made in accordance” and all that follows through “extended, or”;

(4) by striking “If the” and all that follows through the end of the paragraph and inserting the following new subparagraphs:

“(B) STATEMENT AND TIMING OF DISCLOSURES.—In the case of an extension of credit that is secured by the dwelling of a consumer, in addition to the other disclosures required by subsection (a), the disclosures provided under this paragraph shall state in conspicuous type size and format, the following: ‘You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.’

“(i) state in conspicuous type size and format, the following: ‘You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.’; and

“(ii) be furnished to the borrower not later than 7 business days before the date of consummation of the transaction, subject to subparagraph (D).

“(C) VARIABLE RATES OR PAYMENT SCHEDULES.—In the case of an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable, or with respect to which the regular payments may otherwise be variable, in addition to the other disclosures required by subsection (a), the disclosures provided under this paragraph shall label the payment schedule as follows: ‘Payment Schedule: Payments Will Vary Based on Interest Rate Changes.’

“(D) UPDATING APR.—In any case in which the disclosure statement provided 7 business days before the date of consummation of the transaction contains an annual percentage rate of interest that is no longer accurate, as determined under section 107(c), the creditor shall furnish an additional, corrected statement to the borrower, not later than 3 business days before the date of consummation of the transaction.”.

SEC. 212. AUTHORIZATION OF APPROPRIATIONS.

For fiscal years 2008, 2009, 2010, 2011, and 2012, there are authorized to be appropriated to the Attorney General a total of—

(1) \$31,250,000 to support the employment of 30 additional agents of the Federal Bureau of Investigation and 2 additional dedicated prosecutors at the Department of Justice to coordinate prosecution of mortgage fraud efforts with the offices of the United States Attorneys; and

(2) \$750,000 to support the operations of interagency task forces of the Federal Bureau of Investigation in the areas with the 15 highest concentrations of mortgage fraud.

SEC. 213. 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.

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 8 percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; 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 10 percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor;

“(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 (8 percent if the dwelling is personal property) 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

“(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 trans-

action 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) HIGH COST MORTGAGE LENDER.—Section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f)) is amended by striking the last sentence and inserting the following new sentence: “Any person who originates or brokers 2 or more mortgages referred to in subsection (aa) in any 12-month period, any person who originates 1 or more such mortgages through a mortgage broker in any 12 month period, or, in connection with a table funding transaction of such a mortgage, any person to whom the obligation is initially assigned at or after settlement shall be considered to be a creditor for purposes of this title.”

(e) 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 121) 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 paragraphs (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 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.

“(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 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.

“(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.

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

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

“(i) in the case of a first mortgage on the consumer’s principal dwelling, does not exceed by more than 2 percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

“(ii) in the case of a subordinate or junior mortgage on the consumer’s principal dwelling, does not exceed by more than 4 percentage points the yield on such Treasury securities; and

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

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 amended—

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

(2) by redesignating subparagraph (D) as subparagraph (E); and

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

“(D) the amount of the principal obligation of the mortgage exceeds the maximum principal obligation limitation (for the applicable size residence) under section 203(b)(2) of the National Housing Act for the area in which the residence subject to the mortgage is located; and”.

(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 pay-

ments. This subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer.”.

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

(1) by striking “PAYMENT ABILITY OF CONSUMER.—A creditor shall not” and inserting “PAYMENT ABILITY OF CONSUMER.—

“(1) PATTERN OR PRACTICE.—

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

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

“(B) PRESUMPTION OF VIOLATION.—There shall be a presumption that a creditor has violated this subsection if the creditor engages in a pattern or practice of making high-cost mortgages without verifying or documenting the repayment ability of consumers with respect to such mortgages.”; and

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

“(2) PROHIBITION ON EXTENDING CREDIT WITHOUT REGARD TO PAYMENT ABILITY OF CONSUMER.—

“(A) IN GENERAL.—A creditor may not extend credit to a consumer under a high-cost mortgage unless a reasonable creditor would believe at the time the mortgage is closed that the consumer or consumers that are residing or will reside in the residence subject to the mortgage will be able to make the scheduled payments associated with the mortgage, based upon a consideration of current and expected income, current obligations, employment status, and other financial resources, other than equity in the residence.

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

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.”

(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 Secretary of Housing and Urban Development may prescribe such regulations as the Secretary 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, tangible net benefit 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.

“(3) TANGIBLE NET BENEFIT.—The Board may prescribe regulations, in the discretion of the Board, defining the term ‘tangible net benefit’ for purposes of this subsection.”

SEC. 304. AMENDMENT TO PROVISION GOVERNING CORRECTION OF ERRORS.

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

“(b) CORRECTION OF ERRORS.—A creditor has no liability under this section or section 108 or 112 for any failure to comply with any requirement imposed under this chapter or chapter 5, if—

“(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. 305. 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. 306. EFFECTIVE DATE.

The amendments made by this title shall take effect 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)) consummated on or after that date.

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 Office of the Secretary, 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 the Secretary. Such position shall be a career-reserved position in the Senior Executive Service.

“(3) FUNCTIONS.—

“(A) IN GENERAL.—The Director shall have ultimate responsibility within the Department, except for the Secretary, 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) carrying out section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604) for home buying information booklets prepared pursuant to such section;

“(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 all aspects of the mortgage and real estate industry, including consumers.

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

“(3) MORTGAGE SOFTWARE SYSTEMS.—

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

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

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

“(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.

“(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, 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 web site 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 2008, 2009, and 2010, for the develop, implement, and conduct of national public service multimedia campaigns under this paragraph.

“(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, 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 States, units of general local governments, and nonprofit organizations providing homeownership or rental counseling (as such terms are defined in subsection (g)(1)).

“(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.

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

“(D) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$45,000,000 for each of fiscal years 2008 through 2011 for—

- “(i) the operations of the Office of Housing Counseling of the Department of Housing and Urban Development;
- “(ii) the responsibilities of the Secretary 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.”.

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.”.

TITLE V—MORTGAGE DISCLOSURES UNDER REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

SEC. 501. UNIVERSAL MORTGAGE DISCLOSURE IN GOOD FAITH ESTIMATE OF SETTLEMENT SERVICES COSTS.

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

(1) in subsection (c), by adding after the period at the end the following: “Each such good faith estimate shall include the disclosure required under subsection (f) in the form prescribed by the Secretary pursuant to such subsection, except that if the Secretary at any time issues any regulations requiring the use of a standard or uniform form or statement in providing the good faith estimate required under this subsection and prescribing such standard or uniform form or statement, such disclosure shall not be required after the effective date of such regulations.”; and

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

“(f) UNIVERSAL MORTGAGE DISCLOSURE REQUIREMENT FOR GOOD FAITH ESTIMATES.—

“(1) DISCLOSURE.—The disclosure required under this subsection is a written statement regarding the federally related mortgage loan for which the good faith estimate under subsection (c) is made, that consists of the following statements, appropriately and in good faith completed by the lender in accordance with the terms of the federally related mortgage loan involved in the settlement:

“(A) ‘Your Loan Amount will be’ and ‘\$ _____’, each statement appearing in a separate column of the disclosure.

“(B) ‘Your Loan is’, ‘A Fixed Rate Loan’, and ‘An Adjustable Rate Loan’, each statement appearing in a separate column and each of the last two such statements preceded by a checkbox.

“(C) ‘Your Loan Term is’, ‘_____ years’, and ‘_____ years’, each statement appearing in a separate column, and the second such statement shall appear in the same column as the statement required by subparagraph (B) regarding fixed rate loans and the third such statement shall appear in the same column as the statement required by subparagraph (B) regarding adjustable rate loans;

“(D) ‘Your Estimated Interest Rate (APR) is’, ‘_____ %’, and ‘_____ % initially, then it will adjust. In _____ months, Your rate may adjust to a maximum of _____ %’, each statement appearing in a separate column, the second such statement shall appear in the same column as the statement required by subparagraph (B) regarding fixed rate loans and the third such statement shall appear in the same column as the statement required by subparagraph (B) regarding adjustable rate loans, and the blanks relating to estimated interest rate shall be completed by the lender using an annual percentage rate determined in accordance with the Truth in Lending Act.

“(E) ‘Your Total Estimated Monthly Payment (Including loan Principal and Interest, and property Taxes (based on current rates) and Insurance (PITI)) is’, ‘\$ _____ which represents _____ % of Your estimated monthly income’, and ‘\$ _____ which represents _____ % of Your estimated monthly income. When Your interest rate initially adjusts, Your maximum monthly payment may be as high as \$ _____ which represents _____ % of Your estimated monthly income’, each statement appearing in a separate column, and the second such statement shall appear in the same column as the statement required by subparagraph (B) regarding fixed rate loans and the third such statement shall appear in the same column as the statement required by subparagraph (B) regarding adjustable rate loans.

“(F) ‘Your Rate Lock Period is’ and ‘_____ days. After You lock into Your interest rate, You must go to settlement within this number of days to be guaranteed this interest rate.’, each statement appearing in a separate column.

“(G) ‘Does Your loan have a prepayment penalty?’, ‘YES, Your maximum prepayment penalty is \$ _____’, and ‘NO’, the first such statement and the last two such statements appearing in a separate column, and each of the last two such statements preceded by a checkbox.

“(H) ‘Does Your loan have a balloon payment?’, ‘YES, Your balloon payment of \$ _____ is due in _____ months’, and ‘NO’, the first such statement and the last two such statements appearing in a separate column, and each of the last two such statements preceded by a checkbox.

“(I) ‘Your Total Estimated Settlement Charges Will be \$ _____ (a)’ and ‘Your Total Estimated Down Payment will be \$ _____ (b)’, each statement appearing in a separate column.

“(J) ‘Your Total Estimated Cash Needed at Closing Will Be’ and ‘\$ _____ (a+b)’, each statement appearing in a separate column.

“(K) ‘This represents a simple summary of Your Good Faith Estimate (GFE). To understand the terms of Your loan, You must see disclosure forms and the Truth in Lending Act.’, such statement appearing directly below the entirety of the remainder of the disclosure.

“(2) STANDARD FORM.—

“(A) DEVELOPMENT AND USE.—The Secretary, in consultation with the Secretary of Veterans Affairs, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision, shall develop and prescribe a standard form for the disclosure required under this subsection, which shall be used without variation in all transactions in the United States that involve federally related mortgage loans.

“(B) APPEARANCE.—The standard form developed pursuant to this paragraph shall—

“(i) set forth each statement required under a separate subparagraph under paragraph (1) on a separate row of the disclosure;

“(ii) be set forth in 8-point type;

“(iii) be not more than 6 inches in width or 3.5 inches in height;

“(iv) include such boldface type and shading as the Secretary considers appropriate;

“(v) include such parenthetical statements directing the borrower to the terms of the loan (such as ‘see terms’) as the Secretary considers appropriate, in such places as the Secretary considers appropriate; and

“(vi) be located in the upper one-third of the first page of the good faith estimate required under subsection (c) in a manner that allows the identity, address, phone number, and other relevant information of the lender, the identity, address, phone number, and other relevant information of the borrower, and the address of the property for which the federally related mortgage loan is to be made, to be located above the standard form.”.

(b) REGULATIONS.—The Secretary of Housing and Urban Development shall issue regulations prescribing the standard form and the use of such form, as required by the amendment made by subsection (a), not later than the expiration of the 180-day period beginning upon the date of the enactment of this Act, and such regulations shall take effect upon issuance.

PURPOSE AND SUMMARY

H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007, is intended to reform mortgage lending practices to avert a recurrence of the current situation of rising defaults and foreclosures, especially in the subprime market.

H.R. 3915, as reported, establishes a Federal duty of care for mortgage originators; prohibits steering consumers to mortgages with predatory characteristics and steering consumers who qualify for prime mortgages to subprime mortgages; establishes a licensing and registration regime for loan originators; sets minimum standards for mortgages requiring that consumers must have a reasonable ability to repay at the time the mortgage is consummated and that the mortgage must provide a net tangible benefit to the consumer; attaches limited liability to those who securitize mortgages that violate the minimum standards; expands and enhances consumer protections for “high-cost loans” under the Home Ownership

and Equity Protection Act; requires additional disclosures to consumers; establishes an Office of Housing Counseling within the Department of Housing and Urban Development; and includes protections for renters of foreclosed properties.

BACKGROUND AND NEED FOR LEGISLATION

Many American families are facing or are at risk of foreclosure. The Mortgage Bankers Association (MBA) estimates that more than 286,000 mortgage loans entered the foreclosure process in the second quarter of 2007, a record high.

The increase in foreclosures and delinquencies can be traced in part to the proliferation of subprime mortgages, especially in refinancing. Subprime mortgages generally refer to loans that differ materially from “prime” loans (e.g., they may have higher interest rates, additional fees, or prepayment penalties). Some of these loans are made to consumers who pose higher credit risk that disqualifies them from prime loans. They may have weakened credit histories that include delinquencies, charge-offs, judgments, and bankruptcies. Other subprime consumers may qualify for prime loans, but do 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 include banks, bank affiliates, and non-bank mortgage companies. According to MBA, 52 percent of subprime mortgages are made by mortgage brokers and lenders with no Federal supervision; 25 percent are made by finance companies that are affiliates of bank holding companies and indirectly regulated by the Federal Reserve Board; and 23 percent are made by institutions directly regulated by Federal financial regulators such as banks, thrifts, and credit unions.

Attention has been drawn recently to hybrid adjustable-rate mortgages (ARM), for which the interest rate on the note is fixed at a low introductory (or “teaser”) rate for a period of time before adjusting upward. 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 have 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. The most recent National Delinquency Survey by MBA shows the number of subprime loans increasing ten percent in the last year alone. In some areas, they make up a quarter to half the market (e.g., 40 percent of mortgages in Salinas, California; 26 percent in Naples, Florida; at least 51 percent of mortgages in West Virginia; and 26 percent in Wyoming). Origination volumes of subprime mortgages grew from \$100 billion in 2001 to \$800 billion in 2005.

In some transactions brokers receive “yield spread premiums”—up-front payments for persuading consumers to agree to a higher rate than the lender requires. Even if the consumer later defaults, servicing fees and costs provide a stream of income to the servicer, who can be the original lender or an entity that has acquired the servicing rights.

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.

According to the FDIC, between January and September of 2007, \$150 billion in ARMs reset. With an estimated 2 million residential loans (1.3 million subprime ARMs) due to reset between now and the end of 2008, many observers expect the foreclosure problem to worsen. An October 2007 Joint Economic Committee (JEC) report estimates that between 2007 and 2009, 2 million homes with subprime mortgages will be lost to 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 and declining property values in surrounding neighborhoods. In 2005, the Woodstock Institute found that each foreclosure in a neighborhood lowers the property value of surrounding homes by 0.9 percent to 1.136 percent on average. The JEC study estimates that more than \$32 billion in housing wealth will be indirectly destroyed and that State and local governments will lose more than \$917 million in property tax revenue due to increased foreclosures. Recent Home Mortgage Disclosure Act data and academic studies by the Center for Responsible Lending and the National Community Reinvestment Coalition suggest that a disproportionate amount of higher priced subprime lending is concentrated in the minority population and in minority neighborhoods.

Many observers cite a widespread apprehension over exposure to subprime mortgage-backed bonds as the root cause for the tightening of the credit markets this past summer. Concerns initially surfaced when lenders to two leveraged hedge funds demanded additional security as collateral against the hedge funds’ subprime-backed investments. The subsequent closure of these hedge funds

put pressure on other market participants to reprice similar securities. The general threat of such repricing of subprime mortgage risk subsequently led to the present conditions largely for one reason: No credit provider, bond dealer, or investor knows the extent to which other parties are exposed to subprime residential mortgage-backed securities.

Congress has enacted a number of consumer protection laws in the financial sector over the last few decades. These statutes include the Truth in Lending Act (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 the Home Ownership and Equity Protection Act (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. Under HOEPA, the Federal Reserve Board has the authority to prevent “unfair and deceptive” lending by writing regulations governing all lenders, State and Federal.

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.

HEARINGS

During the 110th Congress, the Committee on Financial Services and its subcommittees held several hearings to examine the need for legislation and policy alternatives, culminating in the Committee markup on November 6, 2007.

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on March 27, 2007, entitled “Subprime and Predatory Mortgage Lending: New Regulatory Guidance, Current Market Conditions and Effects on Regulated Financial Institutions.” The following witnesses testified: Panel One: The Honorable Sheila Bair, Chairman, Federal Deposit Insurance Corporation; The Honorable John Reich, Director, Office of Thrift Supervision; The Honorable JoAnn Johnson, Chairman, National Credit Union Administration; Mr. E. Wayne Rushton, Senior Deputy Comptroller, Office of the Comptroller of the Currency; Ms. Sandra F. Braunstein, Director, Division of Consumer and Community Affairs, Federal Reserve Board; and Mr. Steve Antonakes, Commissioner of Banks, Massachusetts Division of Banks, on behalf of Conference of State Banking Supervisors; Panel Two: Mr. Michael Calhoun, President, Center for Responsible Lending; Mr. John Taylor, President and CEO, National Community Reinvestment Coalition; Mr. Allen Fishbein, Director of Housing and Credit Policy, Consumer Federation of America; Mr. John Robbins, Chairman, Mortgage Bankers Association; Mr. Harry H. Dinham, CMC, President, National Asso-

ciation of Mortgage Brokers; and Mr. Alex J. Pollock, Resident Fellow, American Enterprise Institute.

The Subcommittee on Housing and Community Opportunity held a hearing on April 17, 2007, entitled "Possible Responses to Rising Mortgage Foreclosures." The following witnesses testified: Panel One: The Honorable Marcy Kaptur; The Honorable Michael R. Turner; Panel Two: The Honorable Sheila Bair, Chairman, Federal Deposit Insurance Corporation; The Honorable Brian Montgomery, Assistant Secretary for Housing, Department of Housing and Urban Development; Mr. Daniel Mudd, President and CEO, Fannie Mae; and Mr. Richard F. Syron, Chairman and CEO, Freddie Mac; Panel Three: Mr. David Berenbaum, Executive Vice President, National Community Reinvestment Coalition; Ms. Janis Bowdler, Senior Policy Analyst, National Council of La Raza; The Honorable John H. Dalton, President, Housing Policy Council, The Financial Services Roundtable; Mr. George Miller, Executive Director, American Securitization Forum, also representing the Securities Industry and Financial Markets Association; Mr. Douglas A. Garver, Executive Director, Ohio Housing Finance Agency; and Mr. Kenneth D. Wade, CEO, NeighborWorks America.

The Subcommittee on Financial Institutions and Consumer Credit held a hearing on May 8, 2007, entitled "The Role of the Secondary Market in Subprime Lending." The following witnesses testified: Ms. Cara Heiden, Division President, Wells Fargo Home Mortgage; Mr. Warren Kornfeld, Managing Director, Moody's Investors Service; Mr. Howard Mulligan, Attorney at Law, McDermott, Will and Emery; Mr. Donald C. Lampe, Womble Carlyle Sandridge & Rice, PLLC; Mr. Michael Calhoun, President and Chief Operating Officer, Center for Responsible Lending; Mr. Larry B. Litton, Jr., President and CEO, Litton Loan Servicing; and Ms. Judy Kennedy, Executive Director, National Association of Affordable Housing Lenders.

The Committee on Financial Services held a hearing on June 13, 2007, entitled "Improving Federal Consumer Protection in Financial Services." The following witnesses testified: The Honorable Randall S. Kroszner, Governor, Federal Reserve Board; The Honorable John C. Dugan, Comptroller of the Currency, Office of the Comptroller of the Currency; The Honorable Sheila C. Bair, Chairman, Federal Deposit Insurance Corporation; The Honorable Deborah Platt Majoras, Chairman, Federal Trade Commission; Mr. Scott M. Polakoff, Deputy Director and Chief Operating Officer, Office of Thrift Supervision; The Honorable Tom Miller, Attorney General, State of Iowa; and Mr. Steven L. Antonakes, Commissioner of Banks, Commonwealth of Massachusetts, on behalf of the Conference of State Bank Supervisors.

The Subcommittee on Oversight and Investigations held a hearing on July 25, 2007, entitled "Rooting Out Discrimination in Mortgage Lending: Using HMDA as a Tool for Fair Lending Enforcement." The following witnesses testified: Panel One: Mr. John Taylor, President and CEO, National Community Reinvestment Coalition; Ms. Ginny Hamilton, Executive Director, Fair Housing Center of Greater Boston; Mr. Hilary O. Shelton, Director, Washington Bureau, National Association for the Advancement of Colored People; Mr. Saul Solorzano, Executive Director, Central American Resource Center; Mr. Michael LaCour-Little, Professor of Finance, California

State University—Fullerton; Mr. Bill Himpler, Executive Vice President, American Financial Services Association; Panel Two: Ms. Sandra F. Braunstein, Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve Board; Ms. Sandra L. Thompson, Director, Division of Supervision and Consumer Protection, Federal Deposit Insurance Corporation; Ms. Montrice Yakimov, Managing Director, Compliance and Consumer Protection, Office of Thrift Supervision; Mr. David M. Marquis, Director, Office of Examination and Insurance, National Credit Union Administration; Mr. Calvin R. Hagins, Director for Compliance Policy, Office of the Comptroller of the Currency; Ms. Grace Chung Becker, Deputy Assistant Attorney General, Civil Rights Division, U.S. Department of Justice; Ms. Kim Kendrick, Assistant Secretary, Office of Fair Housing and Equal Opportunity, U.S. Department of Housing and Urban Development; and Ms. Lydia B. Parnes, Director, Bureau of Consumer Protection, Federal Trade Commission.

The Committee on Financial Services held a hearing on July 25, 2007, entitled “Improving Federal Consumer Protection in Financial Services—Consumer and Industry Perspectives.” The following witnesses testified: Mr. Travis Plunkett, Legislative Director, Consumer Federation of America; Mr. Raul Gonzalez, Legislative Director, National Council of La Raza; Mr. George Gaberlavage, Director, Policy Research & Development, Consumer and State Affairs, Public Policy Institute, AARP; Mr. Arthur Johnson, Vice President, American Bankers Association, Chairman and Chief Executive Officer of United Bank of Michigan; and Mr. Jim Sivon, Partner, Barnett, Sivon & Natter PC.

The Committee on Financial Services held a field hearing on August 9, 2007, in Minneapolis, Minnesota, entitled “The Effect of Predatory Lending and the Foreclosure Crisis on Twin Cities’ Communities and Neighborhoods.” The following witnesses testified: Panel One: The Honorable R. T. Rybak, Mayor, Minneapolis, Minnesota; The Honorable Chris Coleman, Mayor, St. Paul, Minnesota; The Honorable Lori Swanson, Attorney General, State of Minnesota; Mr. Richard M. Todd, Minneapolis Federal Reserve Chair Vice President, Federal Reserve Bank of Minneapolis; Panel Two: Ms. Sharon Glover, Golden Valley, Minnesota; Mr. Dante Rivera, St. Paul, Minnesota; Panel Three: Ms. Dorothy Bridges, President, Franklin Avenue Bank, Minneapolis, Minnesota; Mr. Paul Satriano, ACORN National Treasurer, MN ACORN State Board Director, St. Paul, Minnesota; Ms. Patricia Hanson, President, Community Development and Specialized Lending, Wells Fargo, Minneapolis, Minnesota; Ms. Sheri Pugh Sullivan, Executive Director, Northside Residents Resource Council, Minneapolis, Minnesota; Mr. Tim Marx, Commissioner, Minnesota Housing Finance Agency, St. Paul, Minnesota; and Ms. Julie Gugin, Executive Director, Minnesota Home Ownership Center.

The Committee on Financial Services held a hearing on September 5, 2007, entitled “Recent Events in the Credit and Mortgage Markets and Possible Implications for U.S. Consumers and the Global Economy.” The following witnesses testified: The Honorable Robert K. Steel, Under Secretary of Domestic Finance, Department of the Treasury; The Honorable John C. Dugan, Comptroller of the Currency; Mr. Erik R. Sirri, Director of the Division of Mar-

ket Regulation, Securities and Exchange Commission; and The Honorable Sheila Bair, Chair, Federal Deposit Insurance Corporation.

The Committee on Financial Services held a hearing on September 20, 2007, entitled “Legislative and Regulatory Options for Minimizing and Mitigating Mortgage Foreclosures.” The following witnesses testified: Panel One: The Honorable Henry M. Paulson, Jr., Secretary of the Treasury, United States Department of the Treasury; The Honorable Alphonso Jackson, Secretary of Housing and Urban Development, United States Department of Housing and Urban Development; The Honorable Ben S. Bernanke, Chairman, Board of Governors of the Federal Reserve System; Panel Two: Mr. Daniel H. Mudd, President and Chief Executive Officer, Fannie Mae; Dr. Richard F. Syron, Chairman and Chief Executive Officer, Freddie Mac; Ms. Judith Liben, Massachusetts Law Reform Institute; Mr. John M. Robbins, Chairman, Mortgage Bankers Association; Mr. Harry H. Dinham, CMC, Past-President, National Association of Mortgage Brokers (NAMB), The Dinham Companies; Mr. Bruce Marks, Chief Executive Officer, Neighborhood Assistance Corporation of America; and Mr. Alex J. Pollock, Resident Fellow, American Enterprise Institute.

The Committee on Financial Services held a field hearing on October 15, 2007, in Roxbury Crossing, Massachusetts, entitled “Mortgage Lending Disparities.” The following witnesses testified: Panel One: The Honorable Deval Patrick, Governor of the Commonwealth of Massachusetts; The Honorable Thomas M. Menino, Mayor of the City of Boston; and The Honorable Martha Coakley, Attorney General of the Commonwealth of Massachusetts; Panel Two: Mr. Chuck Turner, Councilor, City of Boston; Mr. Sam Yoon, At-Large City Councilor, City of Boston; Panel Three: Mr. Jim Campen, Executive Director, Americans for Fairness in Lending; Ms. Ginny Hamilton, Executive Director, Fair Housing Center of Greater Boston; Ms. Acia Adams-Heath, President, Massachusetts Affordable Housing Alliance; Mr. Leonard Alkins, President Emeritus, NAACP Boston Branch; Mr. Thomas B. Kennedy, Senior Vice President, Sovereign Bank; and Ms. Lynn Browne, Executive Vice President and Senior Economist, Federal Reserve Bank of Boston.

The Committee on Financial Services held a hearing on October 24, 2007, entitled “Legislative Proposals on Reforming Mortgage Practices.” The following witnesses testified: Panel One: The Honorable Martin J. Gruenberg, Vice Chairman, Federal Deposit Insurance Corporation; The Honorable John C. Dugan, Comptroller, Office of the Comptroller of the Currency; The Honorable John M. Reich, Director, Office of Thrift Supervision; The Honorable JoAnn Johnson, Chairman, National Credit Union Administration; The Honorable Randall S. Kroszner, Governor, Board of Governors of the Federal Reserve System; The Honorable Steven L. Antonakes, Commissioner, Massachusetts Division of Banks; Panel Two: Mr. Michael D. Calhoun, President and Chief Operating Officer, Center for Responsible Lending; Ms. Janis Bowdler, Senior Housing Policy Analyst, National Council of La Raza; Mr. Hilary Shelton, Director, NAACP Washington Bureau; Mr. John Taylor, President and Chief Executive Officer, National Community Reinvestment Coalition; Mr. John Hope Bryant, Founder, Chairman and Chief Executive Officer, Operation HOPE, Inc.; Panel Three: Mr. Bradley E. Rock,

Chairman, President and Chief Executive Officer, Bank of Smithtown, on behalf of the American Bankers Association and America's Community Bankers; Mr. Kurt Pfothenauer, Senior Vice President for Government Affairs and Public Policy, Mortgage Bankers Association; Mr. Marc Lackritz, President and Chief Executive Officer, Securities Industry and Financial Markets Association; Mr. Marc S. Savitt, President, The Mortgage Center, President-Elect, National Association of Mortgage Brokers; and Mr. Donald C. Lampe, Womble Carlyle Sandridge & Rice, PLLC.

The Committee on Financial Service held a hearing on November 2, 2007, entitled "Progress in Administration and Other Efforts to Coordinate and Enhance Mortgage Foreclosure Prevention." The following witnesses testified: Panel One: The Honorable Robert K. Steel, Under Secretary for Domestic Finance, U.S. Department of the Treasury; and The Honorable Brian D. Montgomery, Assistant Secretary for Housing—Federal Housing Commissioner, U.S. Department of Housing and Urban Development; Panel Two: The Honorable Tom Miller, Attorney General, State of Iowa; Mr. Kenneth Wade, Chief Executive Officer, NeighborWorks America; Mr. Bruce Marks, Chief Executive Officer, Neighborhood Assistance Corporation of America; Mr. Bill Longbrake, Anthony T. Cluff Senior Policy Advisor, The Financial Services Roundtable; and Mr. Sandor Samuels, Executive Managing Director, Countrywide Financial Corporation.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on November 6, 2007, and ordered H.R. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007, as amended, reported with a favorable recommendation by a record vote of 45 yeas and 19 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, as amended, to the House with a favorable recommendation was agreed to by a record vote of 45 yeas and 19 nays (Record vote FC-80). The names of Members voting for and against follow:

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank	X	.....	.....	Mr. Bachus	X	.....	.....
Mr. Kanjorski	X	.....	.....	Mr. Baker .....	.....	.....	.....
Ms. Waters	X	.....	.....	Ms. Pryce (OH) .....	.....	.....	.....
Mrs. Maloney	X	.....	.....	Mr. Castle	X	.....	.....
Mr. Gutierrez	X	.....	.....	Mr. King (NY)	X	.....	.....
Ms. Velázquez	X	.....	.....	Mr. Royce .....	.....	X	.....
Mr. Watt	X	.....	.....	Mr. Lucas .....	.....	X	.....
Mr. Ackerman	X	.....	.....	Mr. Paul .....	.....	.....	.....
Ms. Carson .....	.....	.....	.....	Mr. LaTourette	X	.....	.....
Mr. Sherman	X	.....	.....	Mr. Manzullo .....	.....	X	.....
Mr. Meeks	X	.....	.....	Mr. Jones	X	.....	.....
Mr. Moore (KS)	X	.....	.....	Mrs. Biggert .....	.....	.....	.....
Mr. Capuano	X	.....	.....	Mr. Shays	X	.....	.....
Mr. Hinojosa	X	.....	.....	Mr. Miller (CA)	X	.....	.....
Mr. Clay	X	.....	.....	Mrs. Capito	X	.....	.....
Mrs. McCarthy	X	.....	.....	Mr. Feeney .....	.....	X	.....
Mr. Baca	X	.....	.....	Mr. Hensarling .....	.....	X	.....

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Lynch	X			Mr. Garrett (NJ)		X	
Mr. Miller (NC)	X			Ms. Brown-Waite	X		
Mr. Scott	X			Mr. Barrett (SC)		X	
Mr. Green	X			Mr. Gerlach			
Mr. Cleaver	X			Mr. Pearce		X	
Ms. Bean	X			Mr. Neugebauer		X	
Ms. Moore (WI)	X			Mr. Price (GA)		X	
Mr. Davis (TN)	X			Mr. Davis (KY)		X	
Mr. Sires	X			Mr. McHenry		X	
Mr. Hodes	X			Mr. Campbell		X	
Mr. Ellison	X			Mr. Putnam		X	
Mr. Klein	X			Mrs. Bachmann		X	
Mr. Mahoney (FL)	X			Mr. Roskam		X	
Mr. Wilson	X			Mr. Marchant		X	
Mr. Perlmutter	X			Mr. McCotter		X	
Mr. Murphy	X			Mr. McCarthy		X	
Mr. Donnelly	X						
Mr. Wexler	X						
Mr. Marshall	X						
Mr. Boren	X						

The following amendments were disposed of by record votes. The names of Members voting for and against follow:

An amendment to the amendment in the nature of a substitute by Mr. Pearce, No. 1e, striking section 123 (Anti-steering), was not agreed to by a record vote of 22 yeas and 38 nays (Record vote FC-72):

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus		X	
Mr. Kanjorski		X		Mr. Baker			
Ms. Waters		X		Ms. Pryce (OH)			
Mrs. Maloney		X		Mr. Castle			
Mr. Gutierrez		X		Mr. King (NY)		X	
Ms. Velázquez		X		Mr. Royce	X		
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul			
Ms. Carson				Mr. LaTourette		X	
Mr. Sherman		X		Mr. Manzullo	X		
Mr. Meeks		X		Mr. Jones		X	
Mr. Moore (KS)		X		Mrs. Biggert		X	
Mr. Capuano		X		Mr. Shays	X		
Mr. Hinojosa				Mr. Miller (CA)	X		
Mr. Clay		X		Mrs. Capito		X	
Mrs. McCarthy		X		Mr. Feeney	X		
Mr. Baca		X		Mr. Hensarling	X		
Mr. Lynch				Mr. Garrett (NJ)	X		
Mr. Miller (NC)		X		Ms. Brown-Waite (FL)	X		
Mr. Scott		X		Mr. Barrett (SC)	X		
Mr. Green		X		Mr. Gerlach			
Mr. Cleaver		X		Mr. Pearce	X		
Ms. Bean				Mr. Neugebauer	X		
Ms. Moore (WI)		X		Mr. Price (GA)	X		
Mr. Davis (TN)		X		Mr. Davis (KY)	X		
Mr. Sires		X		Mr. McHenry	X		
Mr. Hodes				Mr. Campbell	X		
Mr. Ellison		X		Mr. Putnam	X		
Mr. Klein		X		Mrs. Bachmann	X		
Mr. Mahoney (FL)		X		Mr. Roskam	X		
Mr. Wilson		X		Mr. Marchant	X		
Mr. Perlmutter		X		Mr. McCotter	X		
Mr. Murphy		X		Mr. McCarthy	X		
Mr. Donnelly		X					
Mr. Wexler		X					
Mr. Marshall		X					

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Boren		X					

An amendment to the amendment in the nature of a substitute by Mr. McHenry, No. 1m, striking title III (High-Cost Mortgages), was not agreed to by a record vote of 25 yeas and 36 nays (Record vote FC-73):

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Baker			
Ms. Waters		X		Ms. Pryce (OH)			
Mrs. Maloney		X		Mr. Castle			
Mr. Gutierrez		X		Mr. King (NY)	X		
Ms. Velázquez		X		Mr. Royce	X		
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul			
Ms. Carson		X		Mr. LaTourette		X	
Mr. Sherman		X		Mr. Manzullo	X		
Mr. Meeks		X		Mr. Jones	X		
Mr. Moore (KS)		X		Mrs. Biggert			
Mr. Capuano		X		Mr. Shays		X	
Mr. Hinojosa		X		Mr. Miller (CA)	X		
Mr. Clay		X		Mrs. Capito	X		
Mrs. McCarthy		X		Mr. Feeney	X		
Mr. Baca		X		Mr. Hensarling	X		
Mr. Lynch		X		Mr. Garrett (NJ)	X		
Mr. Miller (NC)		X		Ms. Brown-Waite (FL)	X		
Mr. Scott		X		Mr. Barrett (SC)	X		
Mr. Green		X		Mr. Gerlach			
Mr. Cleaver		X		Mr. Pearce	X		
Ms. Bean		X		Mr. Neugebauer	X		
Ms. Moore (WI)		X		Mr. Price (GA)	X		
Mr. Davis (TN)		X		Mr. Davis (KY)	X		
Mr. Sires		X		Mr. McHenry	X		
Mr. Hodes		X		Mr. Campbell	X		
Mr. Ellison		X		Mr. Putnam	X		
Mr. Klein		X		Mrs. Bachmann	X		
Mr. Mahoney (FL)		X		Mr. Roskam	X		
Mr. Wilson		X		Mr. Marchant	X		
Mr. Perlmutter		X		Mr. McCotter	X		
Mr. Murphy		X		Mr. McCarthy	X		
Mr. Donnelly		X					
Mr. Wexler		X					
Mr. Marshall		X					
Mr. Boren		X					

An amendment to the amendment in the nature of a substitute by Mr. Garrett, No. 1n, striking rebuttable presumption, was not agreed to by a record vote of 26 yeas and 37 nays (Record vote FC-74):

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus	X		
Mr. Kanjorski		X		Mr. Baker			
Ms. Waters		X		Ms. Pryce (OH)			
Mrs. Maloney		X		Mr. Castle			
Mr. Gutierrez		X		Mr. King (NY)	X		
Ms. Velázquez		X		Mr. Royce	X		
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul			
Ms. Carson		X		Mr. LaTourette		X	
Mr. Sherman		X		Mr. Manzullo	X		
Mr. Meeks		X		Mr. Jones	X		
Mr. Moore (KS)		X		Mrs. Biggert			

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Capuano		X		Mr. Shays	X		
Mr. Hinojosa		X		Mr. Miller (CA)	X		
Mr. Clay		X		Mrs. Capito	X		
Mrs. McCarthy		X		Mr. Feeney	X		
Mr. Baca		X		Mr. Hensarling	X		
Mr. Lynch		X		Mr. Garrett (NJ)	X		
Mr. Miller (NC)		X		Ms. Brown-Waite (FL)	X		
Mr. Scott		X		Mr. Barrett (SC)	X		
Mr. Green		X		Mr. Gerlach			
Mr. Cleaver		X		Mr. Pearce	X		
Ms. Bean		X		Mr. Neugebauer	X		
Ms. Moore (WI)		X		Mr. Price (GA)	X		
Mr. Davis (TN)		X		Mr. Davis (KY)	X		
Mr. Sires		X		Mr. McHenry	X		
Mr. Hodes		X		Mr. Campbell	X		
Mr. Ellison		X		Mr. Putnam	X		
Mr. Klein		X		Mrs. Bachmann	X		
Mr. Mahoney (FL)		X		Mr. Roskam	X		
Mr. Wilson		X		Mr. Marchant	X		
Mr. Perlmutter		X		Mr. McCotter	X		
Mr. Murphy		X		Mr. McCarthy	X		
Mr. Donnelly		X					
Mr. Wexler		X					
Mr. Marshall		X					
Mr. Boren		X					

An amendment to the amendment in the nature of a substitute by Mr. Price (GA), No. 10, excepting certain qualified loans, was not agreed to by a record vote of 19 yeas and 44 nays (Record vote FC-75):

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus			
Mr. Kanjorski		X		Mr. Baker			
Ms. Waters		X		Ms. Pryce (OH)			
Mrs. Maloney		X		Mr. Castle		X	
Mr. Gutierrez		X		Mr. King (NY)		X	
Ms. Velázquez		X		Mr. Royce	X		
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul			
Ms. Carson				Mr. LaTourette		X	
Mr. Sherman		X		Mr. Manzullo	X		
Mr. Meeks		X		Mr. Jones		X	
Mr. Moore (KS)		X		Mrs. Biggert			
Mr. Capuano		X		Mr. Shays		X	
Mr. Hinojosa		X		Mr. Miller (CA)		X	
Mr. Clay		X		Mrs. Capito		X	
Mrs. McCarthy		X		Mr. Feeney	X		
Mr. Baca		X		Mr. Hensarling	X		
Mr. Lynch		X		Mr. Garrett (NJ)	X		
Mr. Miller (NC)		X		Ms. Brown-Waite (FL)	X		
Mr. Scott		X		Mr. Barrett (SC)	X		
Mr. Green		X		Mr. Gerlach			
Mr. Cleaver		X		Mr. Pearce	X		
Ms. Bean		X		Mr. Neugebauer	X		
Ms. Moore (WI)		X		Mr. Price (GA)	X		
Mr. Davis (TN)		X		Mr. Davis (KY)	X		
Mr. Sires		X		Mr. McHenry	X		
Mr. Hodes		X		Mr. Campbell		X	
Mr. Ellison		X		Mr. Putnam	X		
Mr. Klein		X		Mrs. Bachmann	X		
Mr. Mahoney (FL)		X		Mr. Roskam	X		
Mr. Wilson		X		Mr. Marchant	X		
Mr. Perlmutter		X		Mr. McCotter	X		
Mr. Murphy		X		Mr. McCarthy	X		

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Donnelly		X	.....			
Mr. Wexler		X	.....			
Mr. Marshall		X	.....			
Mr. Boren		X	.....			

An amendment to the amendment in the nature of a substitute by Mr. Campbell, No. 1p, striking section 204 (Liability), was not agreed to by a record vote of 22 yeas and 42 nays (Record vote FC-76):

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X	.....	Mr. Bachus		X	.....
Mr. Kanjorski		X	.....	Mr. Baker			
Ms. Waters		X	.....	Ms. Pryce (OH)			
Mrs. Maloney		X	.....	Mr. Castle		X	.....
Mr. Gutierrez		X	.....	Mr. King (NY)		X	.....
Ms. Velázquez		X	.....	Mr. Royce	X		
Mr. Watt		X	.....	Mr. Lucas	X		
Mr. Ackerman		X	.....	Mr. Paul			
Ms. Carson				Mr. LaTourette		X	.....
Mr. Sherman		X	.....	Mr. Manzullo	X		
Mr. Meeks		X	.....	Mr. Jones		X	.....
Mr. Moore (KS)		X	.....	Mrs. Biggert			
Mr. Capuano		X	.....	Mr. Shays	X		
Mr. Hinojosa		X	.....	Mr. Miller (CA)	X		
Mr. Clay		X	.....	Mrs. Capito		X	.....
Mrs. McCarthy		X	.....	Mr. Feeney	X		
Mr. Baca		X	.....	Mr. Hensarling	X		
Mr. Lynch		X	.....	Mr. Garrett (NJ)	X		
Mr. Miller (NC)		X	.....	Ms. Brown-Waite (FL)	X		
Mr. Scott		X	.....	Mr. Barrett (SC)	X		
Mr. Green		X	.....	Mr. Gerlach			
Mr. Cleaver		X	.....	Mr. Pearce	X		
Ms. Bean		X	.....	Mr. Neugebauer	X		
Ms. Moore (WI)		X	.....	Mr. Price (GA)	X		
Mr. Davis (TN)		X	.....	Mr. Davis (KY)	X		
Mr. Sires		X	.....	Mr. McHenry	X		
Mr. Hodes		X	.....	Mr. Campbell	X		
Mr. Ellison		X	.....	Mr. Putnam	X		
Mr. Klein		X	.....	Mrs. Bachmann	X		
Mr. Mahoney (FL)		X	.....	Mr. Roskam	X		
Mr. Wilson		X	.....	Mr. Marchant	X		
Mr. Perlmutter		X	.....	Mr. McCotter	X		
Mr. Murphy		X	.....	Mr. McCarthy	X		
Mr. Donnelly		X	.....			
Mr. Wexler		X	.....			
Mr. Marshall		X	.....			
Mr. Boren		X	.....			

An amendment to the amendment in the nature of a substitute by Mr. Garrett, No. 1r, regarding delayed effective date, was not agreed to by a record vote of 20 yeas and 44 nays (Record vote FC-77):

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X	.....	Mr. Bachus		X	.....
Mr. Kanjorski		X	.....	Mr. Baker			
Ms. Waters		X	.....	Ms. Pryce (OH)			
Mrs. Maloney		X	.....	Mr. Castle		X	.....
Mr. Gutierrez		X	.....	Mr. King (NY)		X	.....
Ms. Velázquez		X	.....	Mr. Royce	X		
Mr. Watt		X	.....	Mr. Lucas	X		
Mr. Ackerman		X	.....	Mr. Paul			
Ms. Carson				Mr. LaTourette		X	.....

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Sherman		X		Mr. Manzullo	X		
Mr. Meeks		X		Mr. Jones		X	
Mr. Moore (KS)		X		Mrs. Biggert			
Mr. Capuano		X		Mr. Shays		X	
Mr. Hinojosa		X		Mr. Miller (CA)	X		
Mr. Clay		X		Mrs. Capito		X	
Mrs. McCarthy		X		Mr. Feeney	X		
Mr. Baca		X		Mr. Hensarling	X		
Mr. Lynch		X		Mr. Garrett (NJ)	X		
Mr. Miller (NC)		X		Ms. Brown-Waite (FL)		X	
Mr. Scott		X		Mr. Barrett (SC)	X		
Mr. Green		X		Mr. Gerlach			
Mr. Cleaver		X		Mr. Pearce	X		
Ms. Bean		X		Mr. Neugebauer	X		
Ms. Moore (WI)		X		Mr. Price (GA)	X		
Mr. Davis (TN)		X		Mr. Davis (KY)	X		
Mr. Sires		X		Mr. McHenry	X		
Mr. Hodes		X		Mr. Campbell	X		
Mr. Ellison		X		Mr. Putnam	X		
Mr. Klein		X		Mrs. Bachmann	X		
Mr. Mahoney (FL)		X		Mr. Roskam	X		
Mr. Wilson		X		Mr. Marchant	X		
Mr. Perlmutter		X		Mr. McCotter	X		
Mr. Murphy		X		Mr. McCarthy	X		
Mr. Donnelly		X					
Mr. Wexler		X					
Mr. Marshall		X					
Mr. Boren		X					

An amendment to the amendment in the nature of a substitute by Mr. Hensarling, No. 1s, regarding a termination provision, was not agreed to by a record vote of 21 yeas and 43 nays (Record vote FC-78):

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X		Mr. Bachus		X	
Mr. Kanjorski		X		Mr. Baker			
Ms. Waters		X		Ms. Pryce (OH)			
Mrs. Maloney		X		Mr. Castle		X	
Mr. Gutierrez		X		Mr. King (NY)		X	
Ms. Velázquez		X		Mr. Royce	X		
Mr. Watt		X		Mr. Lucas	X		
Mr. Ackerman		X		Mr. Paul			
Ms. Carson				Mr. LaTourette		X	
Mr. Sherman		X		Mr. Manzullo	X		
Mr. Meeks		X		Mr. Jones		X	
Mr. Moore (KS)		X		Mrs. Biggert			
Mr. Capuano		X		Mr. Shays		X	
Mr. Hinojosa		X		Mr. Miller (CA)	X		
Mr. Clay		X		Mrs. Capito		X	
Mrs. McCarthy		X		Mr. Feeney	X		
Mr. Baca		X		Mr. Hensarling	X		
Mr. Lynch		X		Mr. Garrett (NJ)	X		
Mr. Miller (NC)		X		Ms. Brown-Waite (FL)	X		
Mr. Scott		X		Mr. Barrett (SC)	X		
Mr. Green		X		Mr. Gerlach			
Mr. Cleaver		X		Mr. Pearce	X		
Ms. Bean		X		Mr. Neugebauer	X		
Ms. Moore (WI)		X		Mr. Price (GA)	X		
Mr. Davis (TN)		X		Mr. Davis (KY)	X		
Mr. Sires		X		Mr. McHenry	X		
Mr. Hodes		X		Mr. Campbell	X		
Mr. Ellison		X		Mr. Putnam	X		
Mr. Klein		X		Mrs. Bachmann	X		
Mr. Mahoney (FL)		X		Mr. Roskam	X		

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Wilson		X	.....	Mr. Marchant	X	.....	.....
Mr. Perlmutter		X	.....	Mr. McCotter	X	.....	.....
Mr. Murphy		X	.....	Mr. McCarthy	X	.....	.....
Mr. Donnelly		X	.....			
Mr. Wexler		X	.....			
Mr. Marshall		X	.....			
Mr. Boren		X	.....			

An amendment to the amendment in the nature of a substitute by Mr. McHenry, No. 1u, delaying effective date pending certification, was not agreed to by a record vote of 20 yeas and 44 nays (Record vote FC-79):

Representative	Aye	Nay	Present	Representative	Aye	Nay	Present
Mr. Frank		X	.....	Mr. Bachus		X	.....
Mr. Kanjorski		X	.....	Mr. Baker .....			.....
Ms. Waters		X	.....	Ms. Pryce (OH) .....			.....
Mrs. Maloney		X	.....	Mr. Castle		X	.....
Mr. Gutierrez		X	.....	Mr. King (NY)		X	.....
Ms. Velázquez		X	.....	Mr. Royce		X	.....
Mr. Watt		X	.....	Mr. Lucas		X	.....
Mr. Ackerman		X	.....	Mr. Paul .....			.....
Ms. Carson		X	.....	Mr. LaTourette		X	.....
Mr. Sherman		X	.....	Mr. Manullo		X	.....
Mr. Meeks		X	.....	Mr. Jones		X	.....
Mr. Moore (KS)		X	.....	Mrs. Biggert .....			.....
Mr. Capuano		X	.....	Mr. Shays		X	.....
Mr. Hinojosa		X	.....	Mr. Miller (CA)		X	.....
Mr. Clay		X	.....	Mrs. Capito		X	.....
Mrs. McCarthy		X	.....	Mr. Feeney		X	.....
Mr. Baca		X	.....	Mr. Hensarling		X	.....
Mr. Lynch		X	.....	Mr. Garrett (NJ)		X	.....
Mr. Miller (NC)		X	.....	Ms. Brown-Waite (FL)		X	.....
Mr. Scott		X	.....	Mr. Barrett (SC)		X	.....
Mr. Green		X	.....	Mr. Gerlach .....			.....
Mr. Cleaver		X	.....	Mr. Pearce		X	.....
Ms. Bean		X	.....	Mr. Neugebauer		X	.....
Ms. Moore (WI)		X	.....	Mr. Price (GA)		X	.....
Mr. Davis (TN)		X	.....	Mr. Davis (KY)		X	.....
Mr. Sires		X	.....	Mr. McHenry		X	.....
Mr. Hodes		X	.....	Mr. Campbell		X	.....
Mr. Ellison		X	.....	Mr. Putnam		X	.....
Mr. Klein		X	.....	Mrs. Bachmann		X	.....
Mr. Mahoney (FL)		X	.....	Mr. Roskam		X	.....
Mr. Wilson		X	.....	Mr. Marchant		X	.....
Mr. Perlmutter		X	.....	Mr. McCotter		X	.....
Mr. Murphy		X	.....	Mr. McCarthy		X	.....
Mr. Donnelly		X	.....			
Mr. Wexler		X	.....			
Mr. Marshall		X	.....			
Mr. Boren		X	.....			

The following other amendments were also considered by the Committee:

An amendment in the nature of a substitute by Mr. Frank (and Mr. Bachus, Mr. Miller (NC), Mr. Watt, Mrs. Biggert and Mrs. Capito), No. 1, manager's amendment, as amended, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Baker, No. 1a, regarding effect on state laws, was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Capuano, No. 1b, regarding notice to tenants, was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mrs. Biggert (and Mr. LaTourette and Mr. Castle), No. 1c, authorizing appropriations for mortgage fraud enforcement, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Clay, No. 1d, regarding HOEPA points and fees, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Green (and Mr. McHenry and Mr. Neugebauer), No. 1f, requiring disclosures, as amended by the amendment by Mr. Baca regarding enhanced mortgage loan disclosures, No. 1f(a), was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Ms. Brown-Waite (and Mr. Garrett), No. 1g, regarding Veterans Affairs' loans, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Watt (and Mr. Miller (NC)), No. 1h, establishing an effective date, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Marchant, No. 1i, excepting single-family units, was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Sherman, No. 1j, exempting certain individuals and entities, was agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Miller (CA), No. 1k, regarding incentive compensation, was offered and withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. Miller (CA), No. 1l, dealing with high-cost mortgages, was offered and withdrawn.

An amendment to the amendment in the nature of a substitute by Mr. Feeney, No. 1q, striking rescission provisions, was not agreed to by a voice vote.

An amendment to the amendment in the nature of a substitute by Mr. Castle, No. 1t, regarding safe harbor, 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. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007, is intended to reform mortgage lending practices to avert a recurrence of the current situation of rising defaults and foreclosures, especially in the subprime market. As reported, H.R. 3915 establishes a Federal duty of care for mortgage originators; pro-

hibits steering any consumer to a predatory mortgage and prime consumers to subprime mortgages; establishes a licensing and registration regime for loan originators, including brokers and bank loan officers; sets minimum standards for mortgages requiring that consumers must have a reasonable ability to repay and that mortgages must provide a net tangible benefit; attaches limited liability to those who securitize mortgage loans that violate the minimum standards; expands and enhances consumer protections for “high-cost loans” under the Home Ownership and Equity Protection Act; requires additional disclosures to consumers; establishes within the Department of Housing and Urban Development an Office of Housing Counseling; and includes protections for renters of foreclosed properties.

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 of the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act.

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:

NOVEMBER 9, 2007.

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. 3915, the Mortgage Reform and Anti-Predatory Lending Act of 2007.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Susanne S. Mehlman and Kathleen Gramp (for federal costs), Mark Booth (for federal revenues), Elizabeth Cove (for the state and local impact), and Paige Piper/Bach (for the private-sector impact).

Sincerely,

PETER R. ORSZAG.

Enclosure.

H.R. 3915—Mortgage Reform and Anti-Predatory Lending Act of 2007

Summary: H.R. 3915 would make numerous changes to federal laws that regulate mortgage practices with the aim of combating

predatory lending practices and providing certain protections to borrowers and investors. Those changes include subjecting all mortgage originators to licensing and registration requirements, establishing minimum standards for creditors, and establishing various consumer protections, such as prohibiting excessive fees for certain types of mortgages.

This legislation also would authorize the appropriation of \$221 million over the 2008–2012 period for the Department of Housing and Urban Development (HUD) to support efforts to promote homeownership counseling and for the Department of Justice (DOJ) to support efforts to combat mortgage fraud. Furthermore, CBO estimates that \$115 million would be required over the 2008–2012 period for HUD to establish an Office of Housing Counseling and support the development of regulations and provide monitoring and oversight of the Nationwide Mortgage Licensing System and Registry (NMLSR). CBO estimates that implementing H.R. 3915 would cost \$316 million over the 2008–2012 period, subject to the appropriation of the necessary amounts.

H.R. 3915 would require loan originators to participate in a Nationwide Mortgage Licensing System and Registry that would be administered by nonfederal entities or HUD in coordination with the federal banking regulatory agencies. H.R. 3915 would set the standards for this system, require HUD to determine if state licensing procedures have met such standards, and authorize the registry administrators to assess fees (revenues) to cover the costs of maintaining and providing access to information from the NMLSR. In CBO's view, the cash flows of the NMLSR related to its regulatory and assessment authorities should appear in the federal budget because they would stem from an exercise of the sovereign power of the federal government. We expect that it would take about three months for those cash flows to begin. Under this legislation, CBO estimates that over the 2008–2012 period, direct spending would total \$65 million and revenues would total \$72 million. Over the 2008–2017 period, we estimate that direct spending would total \$120 million and revenue collections would total \$137 million. Any costs incurred by federal banking regulators to issue regulations and coordinate with the NMLSR would affect net direct spending and revenues, but CBO estimates that the net impacts would be insignificant.

H.R. 3915 contains several intergovernmental mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the costs to state, local, and tribal governments of complying with the mandates would not exceed the annual threshold for intergovernmental mandates established in UMRA (\$66 million in 2007, adjusted annually for inflation).

H.R. 3915 would impose several private-sector mandates as defined in UMRA on the mortgage finance industry, by creating a licensing and registration system for mortgage loan originators, setting new mortgage origination standards, and establishing requirements for high-cost mortgages. The incremental costs to comply with those mandates are uncertain, and CBO cannot determine whether the aggregate direct cost of those mandates would exceed the annual threshold established in UMRA (\$131 million in 2007, adjusted annually for inflation).

Estimated cost to the Federal Government: The estimated budgetary impact of H.R. 3915 is shown in the following table. The costs of this legislation fall within budget functions 370 (commerce and housing credit) and 750 (administration of justice).

Basis of Estimate: For this estimate, CBO assumes that the bill will be enacted by the end of calendar year 2007. We also assume that the cash flows of the NMLSR would appear on the federal budget because of the governmental nature of its activities and the degree of governmental control over the registry system.

TABLE 1.—ESTIMATED BUDGETARY IMPACT OF H.R. 3915

	By fiscal year, in millions of dollars—						
	2008	2009	2010	2011	2012	2008–2012	2008–2017
CHANGES IN SPENDING SUBJECT TO APPROPRIATION							
Estimated Authorization Level	74	76	75	75	30	330	n.a.
Estimated Outlays	25	70	76	75	70	316	n.a.
CHANGES IN REVENUES							
Estimated Revenues	15	15	14	14	14	72	137
CHANGES IN DIRECT SPENDING							
Estimated Budget Authority	15	15	12	12	11	65	120
Estimated Outlays	15	15	12	12	11	65	120

Note: n.a. = not applicable.

Spending subject to appropriation

CBO estimates that implementing H.R. 3915 would cost \$316 million over the 2008–2012 period, subject to appropriation of the necessary amounts. Table 2 details the components of this estimated discretionary spending.

Funding for the Department of Justice. Section 211 would authorize the appropriation of \$32 million over the 2008–2012 period for DOJ to support efforts to combat mortgage fraud. Most of this funding would be used to hire additional agents of the Federal Bureau of Investigation (FBI) and additional prosecutors with the offices of the United States Attorneys. Assuming that appropriations would be spread evenly over fiscal years 2008 through 2012, CBO estimates that enacting those provisions would cost \$30 million over that period.

Public Service Campaign, Grants for Housing Counseling, and Administrative Support for the Office of Counseling. This legislation would establish the Office of Housing Counseling within HUD to support various activities relating to homeownership and rental housing counseling. Section 403 would authorize the appropriation of \$3 million over the 2008–2010 period to support a national campaign to publicize the existence of counseling services for home buyers, homeowners, and renters. In addition, section 404 would authorize the appropriation of \$45 million annually over the 2008–2011 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 \$176 million over the 2008–2012 period.

Furthermore, based on information from HUD, funds for additional personnel, contractors, and information technology would be

required to run the Office of Housing Counseling. CBO estimates that support would cost \$73 million over the 2008–2012 period.

Other Administrative Support. Based on information from HUD, CBO estimates that it would cost \$37 million over the 2008–2012 period to support the development of various regulations, mostly related to mortgage standards required under this legislation and the oversight and monitoring of the NMLSR.

Nationwide registry for licensing

Background. Since 2004, the Conference of State Bank Supervisors (CSBS) and the American Association of Residential Mortgage Regulators (AARMR) have been developing a nationwide licensing system for the residential mortgage industry. The system, which is set to begin operations on January 2, 2008, will increase and centralize information about loan originators and will be available to the public. As of October 2008, agencies in 37 states have signed statements of intent to participate in the nationwide system. Both the CSBS and AARMR anticipate that the remaining 13 states and the District of Columbia and Puerto Rico will eventually commit to participating in the system.

Assuming participation by all the states and that the states meet the minimum standards established under H.R. 3915, CBO does not expect HUD to develop separate systems, though HUD would conduct some monitoring and oversight of the system.

Enacting this legislation would impose a new requirement on loan originators to register with a nationwide registry and would authorize the assessment of fees for the cost of that registration. Although private entities are currently developing and maintaining a registry, participation in that system is voluntary. Under H.R. 3915, participation by loan originators is mandatory (i.e., a loan originator must register to be state-licensed), and HUD would have the authority to enforce that requirement. Thus, CBO expects that the NMLSR would be acting as an agent of the federal government; consequently, the cash flows associated with the NMLSR's regulatory and assessment authorities should be recorded in the federal budget.

TABLE 2.—ESTIMATED EFFECTS OF H.R. 3915 ON SPENDING SUBJECT TO APPROPRIATION

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
CHANGES IN SPENDING SUBJECT TO APPROPRIATION					
Funding for the Department of Justice:					
Authorization Level	7	7	6	6	6
Estimated Outlays	4	7	7	6	6
Public Service Campaign:					
Authorization Level	3	0	0	0	0
Estimated Outlays	1	2	0	0	0
Housing Counseling Grants:					
Authorization Level	45	45	45	45	0
Estimated Outlays	5	38	45	45	40
Administrative Support for the Office of Counseling:					
Estimated Authorization Level	13	16	16	16	16
Estimated Outlays	10	15	16	16	16
Other Administrative Support:					
Estimated Authorization Level	6	8	8	8	8
Estimated Outlays	5	8	8	8	8

TABLE 2.—ESTIMATED EFFECTS OF H.R. 3915 ON SPENDING SUBJECT TO APPROPRIATION—
Continued

	By fiscal year, in millions of dollars—				
	2008	2009	2010	2011	2012
Total Changes:					
Estimated Authorization Level	74	76	75	75	30
Estimated Outlays	25	70	76	75	70

a. H.R. 3915 also would require HUD to appoint an advisory committee to support the mission of the Office of Counseling. Members of the committee would not be paid, but would be reimbursed for any travel expenses. CBO estimates that such travel expenses would cost less than \$500,000 annually.

NMLSR Assessments. The bill would increase federal revenues by authorizing the NMLSR to collect assessments from loan originators (i.e., individual loan officers, branches of lending institutions, and lending companies). Based on information from the CSBS, CBO estimates that those individuals and entities would likely be charged an initial fee and an annual fee. Moreover, fees could be reduced over time as expenses decrease and more loan originators register with the system.

Based on fee schedules for similar activities and assuming that more than 300,000 entities and individuals would register with the NMLSR over the next five years, CBO estimates that about \$72 million in fees would be collected by the NMLSR over the 2008–2012 period. Over the 2008–2017 period, we estimate that about \$137 million in fees would be collected.

Funds collected through such assessments would be spent without further appropriation, and thus, the expenditures would be classified as direct spending. CBO estimates that the NMLSR would spend about \$65 million over the 2008–2012 period and \$120 million over the 2008–2017 period to develop and maintain the registry system. While CBO estimates a lag between the recording of federal revenues and spending, we estimate that over the long run, the net cash flows associated with the NMLSR would be insignificant.

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.

Spending by Federal Bank Regulators. H.R. 3915 also would direct federal bank regulators to issue new regulations and to work jointly with the NMLSR to register individuals associated with depository institutions who originate loans. According to agency officials, implementing this bill would have no significant effect on their workload or budgets. In addition, 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 FDIC would recover any added costs when it adjusts the insurance 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 activities of the agencies that regulate banks would have no signifi-

cant net effect on direct spending or revenues. Budgetary effects on the Federal Reserve are recorded as changes in revenues.

Impact on State, local, and tribal governments: H.R. 3915 contains intergovernmental mandates as defined in UMRA because it would impose new requirements on state regulators and would preempt state laws. Specifically, the bill would require states to ensure that mortgage originators who apply for state licenses or renewals meet minimum standards. According to industry sources and state banking and real estate agencies, in order to comply with those requirements, states would need to license employees of some financial institutions that are not currently required to be licensed under state law, perform ongoing administrative tasks related to the new mortgage licensing system, and train employees in federal mortgage law and the licensing system. The bill also would preempt state laws that allow individuals to seek compensation from entities that issue certain securities. CBO estimates that the cost to state and local governments of that preemption and the new requirements would average less than \$500,000 annually per state; therefore, the total costs would not exceed the threshold established in UMRA (\$66 million in 2007, adjusted annually for inflation). The bill would benefit state and local governments by authorizing grants to provide homeownership and rental counseling.

Impact on the private sector: H.R. 3915 would impose several private-sector mandates as defined in UMRA on the mortgage finance industry, by creating a licensing and registration system for mortgage loan originators, setting new mortgage origination standards, and establishing requirements for high-cost mortgages. The incremental costs to comply those mandates are uncertain for several reasons. Many industry participants 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. CBO does not have sufficient information about current business practices or how the standards in the bill would affect industry income. Consequently, CBO cannot determine whether the aggregate direct cost of those mandates would exceed the annual threshold established in UMRA (\$131 million in 2007, adjusted annually for inflation).

Estimate prepared by: Federal Spending: Susanne S. Mehlman and Kathleen Gramp; Federal Revenues: Mark Booth; Impact on State, Local, and Tribal Governments: Elizabeth Cove; Impact on the Private Sector: Paige Piper/Bach.

Estimate approved by: Peter H. Fontaine, Assistant Director for Budget 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. 3915 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 of 2007” (the Act).

TITLE I—RESIDENTIAL MORTGAGE LOAN ORIGINATION

Subtitle A—Licensing System for Residential Mortgage Loan Originators

Section 101. Purposes and methods for establishing a mortgage licensing system and registry

This section sets forth objectives for a Nationwide Mortgage Licensing System and Registry (NMLSR) for the residential mortgage industry to be established by the States through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

Section 102. Definitions

This section establishes definitions for various terms for this subtitle, including: “loan originator,” “loan processor or underwriter,” “nationwide mortgage licensing system and registry,” “registered loan originator,” “residential mortgage loan,” “State-licensed loan originator,” and “unique identifier.”

Section 103. License or registration required

This section provides that an individual may not engage in the business of a loan originator without obtaining and maintaining registration as a registered loan originator or a license and registration as a State-licensed loan originator, and obtaining a unique identifier, and makes clarifications regarding administrative and clerical workers, as well as loan processors and underwriters.

Section 104. State license and registration application and issuance

This section provides that the applicant to any State for licensing and registration as a State-licensed loan originator has the obligation to furnish certain information to the NMLSR, including fingerprints and personal history and experience. Minimum standards for license issuance include no revocation of loan originator license in the past 5 years, no felony conviction in the past 7 years, demonstration of financial responsibility, completing pre-licensing education reviewed, approved, and published by the NMLSR (at least 20 hours), and passing a written test developed and administered by the NMLSR (at least 75% correct answers out of minimum 100 questions).

Section 105. Standards for State license renewal

This section provides minimum standards for license renewal include the State-licensed loan originator continuing to meet the minimum standards for license issuance and satisfying continuing education requirements.

Section 106. System of registration administration by Federal banking agencies

This section provides that, within one year of the Act's enactment, the Federal banking agencies will jointly develop and maintain a system for registering the employees of banks and their subsidiaries as registered loan originators with the NMLSR, and will furnish or cause to be furnished to the NMLSR certain information including fingerprints and personal history and experience. Under this regime, the Federal banking agencies, at their discretion, may either develop a system to collect registration information from depository institutions and their subsidiary loan originators and furnish that information to the NMLSR, or the Federal banking agencies may arrange for the employee of the depository institution or its subsidiary to supply that information directly to the NMLSR. The Federal banking agencies, through the Federal Financial Institutions Examination Council, will coordinate with the NMLSR to establish a unique identifier for all registered loan originators.

Section 107. Secretary of Housing and Urban Development backup authority to establish a loan originator licensing system

This section provides that if a State does not have in place a system that meets the minimum standards set forth in this section for State-licensed loan originators, or does not participate in the NMLSR, within 1 year of enactment (2 years for those States with legislatures that meet biennially) or any time thereafter, the Secretary of Housing and Urban Development (Secretary) will establish a backup licensing system and maintain and administer a system of licensing and registering loan originators operating in such a State as State-licensed loan originators. The Secretary may grant an extension up to 6 months to those States making a good faith effort to meet the minimum standards. A loan originator licensed by the Secretary can only use the license to originate loans in the State for which it was granted.

Section 108. Backup authority to establish a nationwide mortgage licensing and registry system

This section directs the Secretary to develop and maintain a system for registration and regulation of loan originators if it determines the NMLSR is failing to meet the requirements of the Act.

Section 109. Fees

This section provides that the Federal banking agencies, the Secretary, and the NMLSR may charge reasonable fees to cover costs for maintaining and providing access to the NMLSR, to the extent such fees are not charged to the consumers for accessing the information.

Section 110. Background checks of loan originators

This section provides that the Attorney General will provide access to all criminal history information to States for regulating State-licensed loan originators to the extent criminal background checks are required under State law for licensing loan originators. The Conference of State Bank Supervisors or a wholly owned subsidiary may be used as channeling agent of States for requesting and distributing information between the Department of Justice and the State agencies.

Section 111. Confidentiality of information

This section provides that, except as otherwise provided, requirements under Federal or State privacy or confidentiality laws, and any privilege arising under Federal or State law, will continue to apply after information has been disclosed to the NMLSR or the Department of Housing and Urban Development (HUD) system. Such information may be shared with all State and Federal regulatory officials with mortgage industry oversight authority without loss of privilege or loss of confidentiality protections provided by such laws.

Section 112. Liability provisions

This section provides that the Secretary or any State official or agency or organization serving as the administrator of the NMLSR or the HUD system, or any officer or employee thereof, will not be subject to any civil action for monetary damages for good-faith action or omission while acting within the scope of office or employment.

Section 113. HUD enforcement

This section provides that if the Secretary establishes a backup licensing system pursuant to section 107, then the Secretary will have regulatory authority over the licensees of such backup licensing system (e.g., summons authority, examination authority, and other enforcement authority including the ability to issue cease-and-desist orders and to assess civil money penalties).

Subtitle B—Residential Mortgage Loan Origination Standards

Section 121. Definitions

This section establishes definitions for various terms, including: “Federal banking agencies,” “mortgage originator,” “qualified na-

tionwide registration regime,” “qualifying state licensing law,” “residential mortgage loan,” “securitization vehicle,” and “securitizer.”

Section 122. Residential mortgage loan origination

This section provides that all mortgage originators (including mortgage brokers and depository institutions that originate mortgages) 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 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 the 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 123. Anti-steering

This section provides that no mortgage originator can receive, and no person can pay, any incentive compensation (including yield spread premium) that is based on or varies with the terms of such loans (other than amount of principal) for loans that are not qualified mortgages (i.e., not prime loans). 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, and (3) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age. However, nothing in the Act should be construed as limiting the ability of a mortgage originator to sell residential mortgage loans to subsequent purchasers, 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 124. 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 three times the total amount of mortgage originator fees, plus the consumer's costs including reasonable attorney's fees.

Section 125. 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.

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 consultation with the Commission, will jointly prescribe regulations regarding this provision. A determination of reasonable ability to repay will be based on 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 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 a presumption can be made that the minimum standards (reasonable ability to repay and net tangible benefit) are met for "qualified mortgages" and "qualified safe harbor mortgages." Qualified mortgages are presumed to meet the minimum standards and this presumption may not be rebutted. For qualified safe harbor loans, the presumption may be rebutted only against creditors. Qualified mortgages are loans with annual percentage rates (APRs) that are not equal to or greater than 3 percent over comparable securities issued by the Secretary of

Treasury (Treasuries) or 175 basis points over the Federal Reserve Board's H.15 rate for first lien loans, and 5 percent over comparable Treasuries or 375 basis points over the Federal Reserve Board's H.15 rate for non-first lien loans, or loans made or guaranteed by the Secretary of Veterans Affairs. Qualified safe harbor mortgages are loans with (1) documented consumer income, (2) underwriting process based on fully indexed rate (and taking into account taxes, insurance, and assessments), (3) no negative amortization, (4) other requirements that may be established by regulation, and (5) one of the following: (i) fixed payment for at least five years, (ii) for variable-rate loans, the APR varies based on a margin that is less than 3 percent over a single interest rate index, or (iii) the loan does not cause the consumer's total monthly debts, including amounts under the loan, to exceed a percentage (to be established by regulation) of monthly gross income.

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 this subsection, to prevent circumvention or evasion of this subsection, or to facilitate compliance with this subsection.

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 will not be liable for a loan that violates the minimum standards if the assignee or securitizer: (1) provides a cure to make the loan conform to the minimum standards within 90 days of receiving notice from the consumer, or (2) (a) has a policy against buying mortgage loans that are not qualified mortgages or qualified safe harbor mortgages and, in accordance with regulations that the Federal banking agencies and Securities and Exchange Commission will jointly prescribe, exercises reasonable due diligence to adhere to such policy, including through sampling, and (b) has obtained representations and warranties from the seller or assignor of the loan regarding not selling or assigning loans that violate the minimum standards and takes reasonable steps to obtain the benefit of such representations or warranties. 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. 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, in-

cluding 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.

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 to foreclosure 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 requires that all remaining prepayment penalties expire three months before a loan resets.

This section also provides that, in case of foreclosure, any successor in interest will take over the property subject to any bona fide lease made to bona fide tenant entered into before the notice of foreclosure. Bona fide tenants without a lease will receive at least a 90-day notice before being required to vacate. A lease or tenancy is bona fide if it is the result of arms-length transaction or if the rent is not substantially less than fair market rent.

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. A servicer of a residential mortgage loan must provide annual notice (or whenever there is change in ownership of the loan) to the consumer of the identity of the creditor or assignee who should be contacted concerning the consumer's rights with respect to the loan. 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 the 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 that provides additional remedies against any assignee, securitizer, or securitization vehicle, and the remedies in section 204 of the Act will constitute the sole remedies against any assignee, securitizer, or securitization vehicle for a violation of section 201 or 202 of the Act or any other State law arising out of or relating to the specific subject matter of section 201 and 202 of the Act. No provision of this section will be construed as limiting the application of any State law against a creditor. Nor will any provision of this section be construed as limiting the application of any State law against any assignee, securitizer, or securitization vehicle that does not arise out of or relate to, or provide additional remedies in connection with, the specific subject matter of section 201 or 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. 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. A creditor must also 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. Required disclosures must be made at the earlier of the extension of credit or three days before the closing.

A creditor must provide a consumer who applies for variable rate or variable payment mortgage with a warning that payments will vary based on interest rate changes. A creditor is also required to disclose that a consumer is not required to consummate a mortgage transaction merely because a consumer received disclosures or signed a loan application.

Section 212. Authorization of appropriations

This section provides that for fiscal years 2008, 2009, 2010, 2011, and 2012, there are authorized to be appropriated to the Attorney General a total of (1) \$31,250,000 to support the employment of 30 additional FBI agents 2 additional dedicated prosecutors at the Department of Justice to coordinate prosecution of mortgage fraud efforts with the offices of the United States Attorneys, and (2) \$750,000 to support the operations of interagency task forces of the FBI in the areas with the 15 highest concentration of mortgage fraud.

Section 213. 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.

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) to also cover purchase money loans and open-end loans. The section also codifies the existing Federal Reserve standard for the APR trigger which is set at 8 percent above comparable Treasuries for first mortgages and Treasuries plus 10 percent for subordinate mortgages. The points and fees trigger (total points and fees payable in connection with the loan transaction) is lowered from 8 percent to 5 percent for most loans. The points and fees trigger stays at 8 percent for loans secured by a dwelling that is personal property. A third trigger is established for loans with prepayment penalties that exceed 2 percent or 36 months duration. The definition of points and fees is expanded to include all compensation paid directly or indirectly by a consumer or creditor to a mortgage broker from any source (including table-funded transactions), 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. Certain bona fide discount points and prepayment penalties (up to two points for near-market interest rate loans) are excluded from the determination of the amount of points and fees that trigger HOEPA protections.

Section 302. Amendments to existing requirements for certain mortgages

This section prohibits prepayment penalties on HOEPA loans with principal amounts below the Federal Housing Administration loan limit for a given geographical area. Balloon payments on high-cost mortgages are prohibited unless the payment schedule is adjusted to the seasonal or irregular income of the consumer. Addi-

tional high-cost mortgage “ability to repay” protections are provided. A creditor may not extend credit to a consumer under a high-cost mortgage unless a reasonable creditor would believe at the time the mortgage is closed that the consumer will be able to make the scheduled payments associated with the mortgage, based on a consideration of current and expected income, current obligations, employment status, and other financial resources other than equity in the residence. There will be a rebuttable presumption of ability to repay if, at the time the high-cost mortgage is consummated, the consumer’s total monthly debts, including amounts under the mortgage, do not exceed 50 percent of monthly gross income as verified by tax returns, payroll receipts, or other third-party income verification.

Section 303. Additional Requirements for Certain Mortgages

This section prohibits creditors from (1) encouraging that borrowers default on an existing loan when refinancing such existing loan with a high-cost mortgage, (2) charging multiple late fees for a high-cost mortgage on the same delinquent payment and caps any given late fee at 4 percent, (3) unilaterally accelerating a high-cost mortgage, (4) directly or indirectly financing points and fees for high-cost mortgages (the restriction applies to prepayment penalties if the creditor or an affiliate is the noteholder of the note being refinanced), (5) structuring a high-cost mortgage to evade HOEPA protections, (6) modifying or deferring fees unless they can be proven beneficial to the consumer, (7) providing a high-cost mortgage to a consumer unless the creditor has received a certification that the consumer received pre-loan counseling from a HUD-approved entity, and (8) knowingly or intentionally engaging in flipping in connection with a high-cost mortgage. Creditors and servicers are required to disclose and provide free access to payoff amounts.

It is intended that the counseling certification by a HUD-approved entity will indicate that the consumer received counseling, and thus received a written document (i.e., certificate) stating the consumer received counseling. This certificate and certification are intended as evidence that the borrower has received counseling and not that the HUD-approved entity has made a determination on the suitability or affordability of the loan.

Section 304. Amendment to Provision Governing Correction of Errors

This section permits creditors to correct non-bona fide errors within 30 days of the loan closing and prior to the institution of any action. Creditors are permitted to correct bona fide errors within 60 days of the creditors’ discovery or receipt of notification and prior to the institution of any action. A creditor may correct an error by making the loan satisfy the applicable requirements of TILA (including requirements of the Act) or, in the case of a high-cost mortgage, changing the terms of the loan so the loan is no longer a high-cost mortgage.

Section 305. Regulations

This section requires the Federal Reserve Board to implement regulations under this title within six months of enactment of the Act.

Section 306. Effective date

The amendments made by this title will be effective upon enactment and will apply to high-cost mortgages consummated on or after that date.

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 under the Office of the Secretary, 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 all aspects of the mortgage and real estate industry, including consumers. 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.

Section 403. Counseling procedures

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 re-

garding 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. The Secretary shall develop, implement, and conduct national public service multimedia campaigns to make potentially vulnerable consumers aware of the existence of homeownership counseling. Appropriations not to exceed \$3 million are authorized for national public service multimedia campaigns for fiscal years 2008, 2009, and 2010. 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 States, units of local government, and non-profit organizations. The Secretary shall establish standards and guidelines for assistance eligibility. Appropriations of \$45 million are authorized for each of fiscal years 2008 through 2011 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.

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,” and “unit of general local government.”

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.

TITLE V—MORTGAGE DISCLOSURES UNDER REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

Section 501. Universal mortgage disclosure in good faith estimate of settlement services costs

This section provides additional disclosures in a good faith estimate (GFE) under the Real Estate Settlement Procedures Act. A GFE must include the loan amount, whether the loan is a fixed- or variable rate loan, the estimated interest rate, the total estimated monthly payment, the rate lock period, any prepayment penalty, any balloon payment, the total estimated settlement charge, and the total estimated cash needed at closing.

The Secretary, in consultation with the Secretary of Veterans Affairs, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision, shall develop and prescribe a standard form for GFE disclosures be used in all transactions in the United States that involve Federally related mortgage loans.

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

§ 101. Short title

This title may be cited as the Truth in Lending Act.

* * * * *

§ 103. Definitions and rules of construction

(a) * * *

* * * * *

(f) The term “creditor” refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purpose of the requirements imposed under chapter 4 and sections 127(a)(5), 127(a)(6), 127(a)(7), 127(b)(1), 127(b)(2), 127(b)(3), 127(b)(8), and 127(b)(10) of chapter 2 of this title, the term “creditor” shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Board shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans. **[Any person who originates 2 or more mortgages referred to in subsection (aa) in any 12-month period or any person who originates 1 or more such mortgages through a mortgage broker shall be considered to be a creditor for purposes of this title.]** *Any person who originates or brokers 2 or more mortgages referred to in subsection (aa) in any 12-month period, any person who originates 1 or more such mortgages through a mortgage broker in any 12 month period, or, in connection with a table funding transaction of such a mortgage, any person to whom the obligation is initially assigned at or after settlement shall be considered to be a creditor for purposes of this title.*

* * * * *

[(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 8 percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; 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 10 percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor;*

(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 (8 percent if the dwelling is personal property) 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*

(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 ef-*

fect 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) all items included in the finance charge, except interest or the time-price differential;

[(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) the charge is reasonable;

(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—

- (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, for direct or indirect compensation or gain, or in the expectation of direct or indirect compensation or gain;

(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); and

(C) does not include any person who is 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.

(4) NATIONWIDE MORTGAGE LICENSING SYSTEM AND REGISTRY.—The term “Nationwide Mortgage Licensing System and

Registry” has the same meaning as in section 102(5) of the Mortgage Reform and Anti-Predatory Lending Act of 2007.

(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.

(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, or special purpose entity 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.

(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 paragraphs (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 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.

(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 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.

(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.

(4) ALLOWANCE OF CONVENTIONAL PREPAYMENT PENALTY.—Subsection (aa)(1)(4)(E) shall not apply so as to include a prepayment penalty or fee that is authorized by law other than this title and may be imposed pursuant to the terms of a high-cost mortgage (or other consumer credit transaction secured by the consumer's principal dwelling) if—

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

(i) in the case of a first mortgage on the consumer's principal dwelling, does not exceed by more than 2 percentage points the yield on Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(ii) in the case of a subordinate or junior mortgage on the consumer's principal dwelling, does not exceed by more than 4 percentage points the yield on such Treasury securities; and

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

§ 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.

* * * * *

129A. Residential mortgage loan origination.

129B. Minimum standards for residential mortgage loans.

* * * * *

§ 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 an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable, or with respect to which the regular payments may otherwise be variable, in addition to the other disclosures required under this subsection, the disclosures provided under this subsection shall state the maximum amount of the regular required payments on the loan, based on the maximum interest rate allowed, introduced with the following language in conspicuous type size and format: "Your payment can go as high as \$ ___", the blank to be filled in with the maximum possible payment amount.

(17) In the case of a residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurance, and assessments, the following statement: "Your payments will be increased to cover taxes and insurance. In the first year, you will pay an additional \$ ___ [insert the amount of the monthly payment to the account] every month to cover the costs of taxes and insurance."

(18) 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.

(19) *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.*

(20) *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 based on the interest rate of the loan.*

(b)(1) * * *

[(2) In the]

(2) *MORTGAGE DISCLOSURES.—*

(A) *IN GENERAL.—In the case of [a residential mortgage transaction, as defined in section 103(w)] any extension of credit that is secured by the dwelling of a consumer, which is also subject to the Real Estate Settlement Procedures Act, good faith estimates of the disclosures required under subsection (a) [shall be made in accordance with regulations of the Board under section 121(c) before the credit is extended, or] shall be delivered or placed in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier. [If the disclosure statement furnished within three days of the written application contains an annual percentage rate which is subsequently rendered inaccurate within the meaning of section 107(c), the creditor shall furnish another statement at the time of settlement or consummation.]*

(B) *STATEMENT AND TIMING OF DISCLOSURES.—In the case of an extension of credit that is secured by the dwelling of a consumer, in addition to the other disclosures required by subsection (a), the disclosures provided under this paragraph shall state in conspicuous type size and format, the following: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application."*

(i) *state in conspicuous type size and format, the following: "You are not required to complete this agreement merely because you have received these disclosures or signed a loan application."; and*

(ii) *be furnished to the borrower not later than 7 business days before the date of consummation of the transaction, subject to subparagraph (D).*

(C) *VARIABLE RATES OR PAYMENT SCHEDULES.—In the case of an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable, or with respect to which the regular payments may otherwise be variable, in addition to the other disclosures required by subsection (a), the disclosures provided under this paragraph shall label the payment schedule as*

follows: "Payment Schedule: Payments Will Vary Based on Interest Rate Changes."

(D) *UPDATING APR.*—In any case in which the disclosure statement provided 7 business days before the date of consummation of the transaction contains an annual percentage rate of interest that is no longer accurate, as determined under section 107(c), the creditor shall furnish an additional, corrected statement to the borrower, not later than 3 business days before the date of consummation of the transaction.

* * * * *

(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-day period beginning on the date the application for the loan from a consumer is received by the creditor.

* * * * *

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) * * *

* * * * *

(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 amount of the principal obligation of the mortgage exceeds the maximum principal obligation limitation (for the applicable size residence) under section 203(b)(2) of the National Housing Act for the area in which the residence subject to the mortgage is located; and

[(D)] (E) 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.

* * * * *

(h) PROHIBITION ON EXTENDING CREDIT WITHOUT REGARD TO PAYMENT ABILITY OF CONSUMER.—A creditor shall not **PAYMENT ABILITY OF CONSUMER.**—

(1) PATTERN OR PRACTICE.—

(A) IN GENERAL.—A creditor shall not engage in a pattern or practice of extending credit to consumers under mortgages referred to in section 103(aa) based on the consumers' collateral without regard to the consumers' repayment ability, including the consumers' current and expected income, current obligations, and employment.

(B) PRESUMPTION OF VIOLATION.—There shall be a presumption that a creditor has violated this subsection if the creditor engages in a pattern or practice of making high-cost mortgages without verifying or documenting the repayment ability of consumers with respect to such mortgages.

(2) PROHIBITION ON EXTENDING CREDIT WITHOUT REGARD TO PAYMENT ABILITY OF CONSUMER.—

(A) IN GENERAL.—A creditor may not extend credit to a consumer under a high-cost mortgage unless a reasonable creditor would believe at the time the mortgage is closed that the consumer or consumers that are residing or will reside in the residence subject to the mortgage will be able to make the scheduled payments associated with the mortgage, based upon a consideration of current and expected income, current obligations, employment status, and other financial resources, other than equity in the residence.

(B) PRESUMPTION OF ABILITY.—For purposes of this subsection, there shall be a rebuttable presumption that a consumer is able to make the scheduled payments to repay the obligation if, at the time the high-cost mortgage is consummated, the consumer's total monthly debts, including amounts under the mortgage, do not exceed 50 percent of his or her monthly gross income as verified by tax returns, payroll receipts, or other third-party income verification.

* * * * *

(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.

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

(1) * * *

* * * * *

(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.

(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 Secretary of Housing and Urban Development may prescribe such regulations as the Secretary 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, tangible net benefit 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.

(3) *TANGIBLE NET BENEFIT.*—The Board may prescribe regulations, in the discretion of the Board, defining the term “tangible net benefit” for purposes of this subsection.

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§ 129A. Residential mortgage loan origination

(a) *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, registered, and, when required, licensed as a mortgage originator in accordance with applicable State or Federal law including subtitle A of title I of the Mortgage Reform and Anti-Predatory Lending Act of 2007;

(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;

(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 the unique identifier of the originator provided by the Nationwide Mortgage Licensing System and Registry on all loan documents.

(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 receives a net tangible benefit (as determined in accordance with regulations prescribed under section 129B(a)); 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 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 106 of the Mortgage Reform and Anti-Predatory Lending Act of 2007.

(b) *PROHIBITION ON STEERING INCENTIVES.*—

(1) *IN GENERAL.*—No mortgage originator may receive from any person, and no person may pay to any mortgage originator, directly or indirectly, any incentive compensation (including yield spread premium) that is based on, or varies with, the terms (other than the amount of principal) of any loan that is not a qualified mortgage (as defined in section 129B(c)(3)).

(2) *ANTI-STEERING 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;
- (ii) does not provide the consumer with a net tangible benefit; 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 129B(c)(3)) to a residential mortgage loan that is not a qualified mortgage; and

(C) abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age.

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

(A) limiting or affecting the ability of a mortgage originator to sell residential mortgage loans to subsequent purchasers;

(B) restricting a consumer's ability to finance origination fees to the extent that such fees were fully disclosed to the consumer earlier in the application process and do not vary based on the terms of the loan or the consumer's decision about whether to finance such fees; or

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

(c) *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 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.

§ 129B. 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 be based on 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 take into consideration 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 take into consideration 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 or a qualified safe harbor mortgage.

(2) *REBUTTABLE PRESUMPTION.*—Any presumption established under paragraph (1) with respect to any residential mortgage loan shall be rebuttable only—

(A) against the creditor of such loan; and

(B) if such loan is a qualified safe harbor mortgage.

(3) *DEFINITIONS.*—For purposes of this section the following definitions shall apply:

(A) *MOST RECENT CONVENTIONAL MORTGAGE RATE.*—The term “most recent conventional mortgage rate” means the contract interest rate on commitments for fixed-rate first mortgages most recently published in the Federal Reserve Statistical Release on selected interest rates (daily or weekly), and commonly referred to as the H.15 release (or any successor publication), in the week preceding a date of determination for purposes of applying this subsection.

(B) *QUALIFIED MORTGAGE.*—The term “qualified mortgage” means—

(i) any residential mortgage loan that constitutes a first lien on the dwelling or real property securing the loan and either—

(I) has an annual percentage rate that does not equal or exceed the yield on securities issued by the Secretary of the Treasury under chapter 31 of title 31, United States Code, that bear comparable periods of maturity by more than 3 percentage points; or

(II) has an annual percentage rate that does not equal or exceed the most recent conventional mortgage rate, or such other annual percentage rate as may be established by regulation under paragraph (6), by more than 175 basis points;

(ii) any residential mortgage loan that is not the first lien on the dwelling or real property securing the loan and either—

(I) has an annual percentage rate that does not equal or exceed the yield on securities issued by the Secretary of the Treasury under chapter 31 of title 31, United States Code, that bear comparable periods of maturity by more than 5 percentage points; or

(II) has an annual percentage rate that does not equal or exceed the most recent conventional mortgage rate, or such other annual percentage rate as may be established by regulation under paragraph (6), by more than 375 basis points; and

(iii) a loan made or guaranteed by the Secretary of Veterans Affairs.

(C) *QUALIFIED SAFE HARBOR MORTGAGE.*—The term “qualified safe harbor mortgage” means any residential mortgage loan—

(i) for which the income and financial resources of the consumer are verified and documented;

(ii) for which the residential mortgage loan underwriting process is based on the fully-indexed rate, and takes into account all applicable taxes, insurance, and assessments;

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

(iv) meets such other requirements as may be established by regulation; and

(v) for which any of the following factors apply with respect to such loan:

(I) The periodic payment amount for principal and interest are fixed for a minimum of 5 years under the terms of the loan.

(II) In the case of a variable rate loan, the annual percentage rate varies based on a margin that is less than 3 percent over a single generally accepted interest rate index that is the basis for determining the rate of interest for the mortgage.

(III) The loan does not cause the consumer's total monthly debts, including amounts under the loan, to exceed a percentage established by regulation of his or her monthly gross income or such other maximum percentage of such income as may be prescribed by regulation under paragraph (6).

(4) DETERMINATION OF COMPARISON TO TREASURY SECURITIES.—

(A) IN GENERAL.—Without regard to whether a residential mortgage loan is subject to or reportable under the Home Mortgage Disclosure Act of 1975 and subject to subparagraph (B), the difference between the annual percentage rate of such loan and the yield on securities issued by the Secretary of the Treasury under chapter 31 of title 31, United States Code, having comparable periods of maturity shall be determined using the same procedures and methods of calculation applicable to loans that are subject to the reporting requirements under the Home Mortgage Disclosure Act of 1975.

(B) DATE OF DETERMINATION OF YIELD.—The yield on the securities referred to in subparagraph (A) shall be determined, for purposes of such subparagraph and paragraph (3) with respect to any residential mortgage loan, as of the 15th day of the month preceding the month in which a completed application is submitted for such loan.

(5) APR IN CASE OF INTRODUCTORY OFFER.—For purposes of making a determination of whether a residential mortgage loan that provides for a fixed interest rate for an introductory period and then resets or adjusts to a variable rate is a qualified mortgage, the determination of the annual percentage rate, as determined in accordance with regulations prescribed by the Board under section 107, shall be based on the greater of the introductory rate and the fully indexed rate of interest.

(6) 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.—The Federal banking agencies may jointly prescribe regulations that revise, add to, or subtract from the criteria that define a qualified mortgage and a qualified safe harbor mortgage to the extent necessary and appropriate to effectuate the purposes of this subsection, to prevent circumvention or evasion of this subsection, or to facilitate compliance with this subsection.

- (7) *RULE OF CONSTRUCTION.*—No provision of this subsection may be construed as implying that a residential mortgage loan may be presumed to violate subsection (a) or (b) if such loan is not a qualified mortgage or a qualified safe harbor mortgage.
- (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 (7), 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 shall be liable under paragraph (2) with respect to such loan if—

(A) 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); or

(B) each of the following conditions are met:

(i) The assignee or securitizer—

(I) has a policy against buying residential mortgage loans other than qualified mortgages or qualified safe harbor mortgages (as defined in subsection (c));

(II) the policy is intended to verify seller or assignor compliance with the representations and warranties required under clause (ii); and

(III) in accordance with regulations which the Federal banking agencies and the Securities and Exchange Commission shall jointly prescribe, exercises reasonable due diligence to adhere to such policy in purchasing residential mortgage loans,

including through adequate, thorough, and consistently applied sampling procedures.

(ii) The contract under which such assignee or securitizer acquired the residential mortgage loan from a seller or assignor of the loan contains representations and warranties that the seller or assignor—

(I) is not selling or assigning any residential mortgage loan which is not a qualified mortgage or a qualified safe harbor mortgage; or

(II) is a beneficiary of a representation and warranty from a previous seller or assignor to that effect,

and the assignee or securitizer in good faith takes reasonable steps to obtain the benefit of such representation or warranty.

(4) 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 would have satisfied the requirements of subsection (a) and (b) if the loan had contained such terms as of the origination of the loan.

(5) 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).

(6) INABILITY TO PROVIDE RESCISSION.—If a creditor, assignee, or securitizer cannot provide 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.

(7) 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).

(8) 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.

(9) **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) **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), 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.

(f) **PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.**—

(1) **PROHIBITED ON CERTAIN LOANS.**—A residential mortgage loan that is not 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.

(2) **PROHIBITED AFTER INITIAL PERIOD ON LOANS WITH A RESET.**—A qualified mortgage with a fixed interest rate for an introductory period that adjusts or resets after such period may 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.

(g) *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 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.

(h) *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.

(i) *DUTY OF SECURITIZER TO RETAIN ACCESS TO LOANS.*—Any securitizer shall reserve the right and preserve an ability, in any document or contract establishing any pool of assets that includes any residential mortgage loan—

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

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

(j) *EFFECT OF FORECLOSURE ON PREEXISTING LEASE.*—

(1) *IN GENERAL.*—In the case of any foreclosure on any dwelling or residential real property securing an extension of credit made under a contract entered into after the date of the enactment of the Mortgage Reform and Anti-Predatory Lending Act of 2007, any successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

(A) any bona fide lease made to a bona fide tenant entered into before the notice of foreclosure; and

(B) the rights of any bona fide tenant without a lease or with a lease terminable at will under State law and the provision, by the successor in interest, of a notice to vacate to the tenant at least 90 days before the effective date of the notice.

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

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

(B) the lease or tenancy requires the tenant to pay rent that is not substantially less than fair market rent for the property.

(k) MORTGAGES WITH NEGATIVE AMORTIZATION.—No creditor may extend credit to a first-time 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) the consumer 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) ANNUAL CONTACT INFORMATION.—At least once annually and whenever there is a change in ownership of a residential mortgage loan, the servicer with respect to a residential mortgage loan shall provide a written notice to the consumer identifying the name 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.

§ 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 ~~【\$200】~~ \$400 or greater than ~~【\$2,000】~~ \$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;

* * * * *

[(b) A creditor or assignee has no liability under this section or section 108 or section 112 for any failure to comply with any requirement imposed under this chapter or chapter 5, if within sixty days after discovering an error, whether pursuant to a final written examination report or notice issued under section 108(e)(1) or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.]

(b) CORRECTION OF ERRORS.—A creditor has no liability under this section or section 108 or 112 for any failure to comply with any requirement imposed under this chapter or chapter 5, if—

(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.

* * * * *

(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. *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 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) intervene in the action;
- (2) upon intervening—
 - (A) remove the action to the appropriate United States district court, if it was not originally brought there; and
 - (B) be heard on all matters arising in the action; and
- (3) file a petition for appeal.

* * * * *

**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 Office of the Secretary, 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 the Secretary. Such position shall be a career-reserved position in the Senior Executive Service.*

(3) *FUNCTIONS.*—

(A) *IN GENERAL.*—*The Director shall have ultimate responsibility within the Department, except for the Secretary, 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) carrying out section 5 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2604) for home buying information booklets prepared pursuant to such section;

(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 all aspects of the mortgage and real estate industry, including consumers.

(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.

* * * * *

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 States, units of general local governments, and nonprofit organizations providing homeownership or rental counseling (as such terms are defined in subsection (g)(1)).

(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.

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

(D) *AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated \$45,000,000 for each of fiscal years 2008 through 2011 for—*

- (i) the operations of the Office of Housing Counseling of the Department of Housing and Urban Development;*
- (ii) the responsibilities of the Secretary 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 conjunction 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.

(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, 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 web site 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 2008, 2009, and 2010, for the develop, implement, and conduct of national public service multimedia campaigns under this paragraph.

(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 devel-

opment 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, 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.

* * * * *

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

* * * * *

[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. Each such good faith estimate shall include the disclosure required under subsection (f) in the form prescribed by the Secretary pursuant to such subsection, except that if the Secretary at any time issues any regulations requiring the use of a standard or uniform form or statement in providing the good faith estimate required under this subsection and prescribing such standard or uniform form or statement, such disclosure shall not be required after the effective date of such regulations.*

(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.

* * * * *

(f) *UNIVERSAL MORTGAGE DISCLOSURE REQUIREMENT FOR GOOD FAITH ESTIMATES.*—

(1) *DISCLOSURE.*—*The disclosure required under this subsection is a written statement regarding the federally related mortgage loan for which the good faith estimate under subsection (c) is made, that consists of the following statements, appropriately and in good faith completed by the lender in accordance with the terms of the federally related mortgage loan involved in the settlement:*

(A) *“Your Loan Amount will be” and “\$ _____”, each statement appearing in a separate column of the disclosure.*

(B) *“Your Loan is”, “A Fixed Rate Loan”, and “An Adjustable Rate Loan”, each statement appearing in a separate column and each of the last two such statements preceded by a checkbox.*

(C) *“Your Loan Term is”, “_____ years”, and “_____ years”, each statement appearing in a separate column, and the second such statement shall appear in the same column as the statement required by subparagraph (B) regarding fixed rate loans and the third such statement shall appear in the same column as the statement required by subparagraph (B) regarding adjustable rate loans;*

(D) *“Your Estimated Interest Rate (APR) is”, “_____ %”, and “_____ % initially, then it will adjust. In _____ months, Your rate may adjust to a maximum of _____ %”, each statement appearing in a separate column, the second such statement shall appear in the same column as the statement required by subparagraph (B) regarding fixed rate loans and the third such statement shall appear in the same column as the statement required by subparagraph (B) regarding adjustable rate loans, and the blanks relating to estimated interest rate shall be completed by the lender using an annual percentage rate determined in accordance with the Truth in Lending Act.*

(E) *“Your Total Estimated Monthly Payment (Including loan Principal and Interest, and property Taxes (based on current rates) and Insurance (PITI) is”, “\$ _____ which represents _____ % of Your estimated monthly income”, and “\$ _____ which represents _____ % of Your estimated monthly income. When Your interest rate initially adjusts, Your maximum monthly payment may be as high as \$ _____ which represents _____ % of Your estimated monthly income”, each statement appearing in a separate column, and the second such statement shall appear in the same column as the statement required by subparagraph (B) regarding fixed rate loans and the third such statement shall appear in the same column as the statement required by subparagraph (B) regarding adjustable rate loans.*

(F) *“Your Rate Lock Period is” and “_____ days. After You lock into Your interest rate, You must go to settlement within this number of days to be guaranteed this interest rate.”, each statement appearing in a separate column.*

(G) "Does Your loan have a prepayment penalty?", "YES, Your maximum prepayment penalty is \$ _____", and "NO", the first such statement and the last two such statements appearing in a separate column, and each of the last two such statements preceded by a checkbox.

(H) "Does Your loan have a balloon payment?", "YES, Your balloon payment of \$ _____ is due in _____ months", and "NO", the first such statement and the last two such statements appearing in a separate column, and each of the last two such statements preceded by a checkbox.

(I) "Your Total Estimated Settlement Charges Will be \$ _____ (a)" and "Your Total Estimated Down Payment will be \$ _____ (b)", each statement appearing in a separate column.

(J) "Your Total Estimated Cash Needed at Closing Will Be" and "\$ _____ (a+b)", each statement appearing in a separate column.

(K) "This represents a simple summary of Your Good Faith Estimate (GFE). To understand the terms of Your loan, You must see disclosure forms and the Truth in Lending Act.", such statement appearing directly below the entirety of the remainder of the disclosure.

(2) STANDARD FORM.—

(A) DEVELOPMENT AND USE.—The Secretary, in consultation with the Secretary of Veterans Affairs, the Federal Deposit Insurance Corporation, and the Director of the Office of Thrift Supervision, shall develop and prescribe a standard form for the disclosure required under this subsection, which shall be used without variation in all transactions in the United States that involve federally related mortgage loans.

(B) APPEARANCE.—The standard form developed pursuant to this paragraph shall—

(i) set forth each statement required under a separate subparagraph under paragraph (1) on a separate row of the disclosure;

(ii) be set forth in 8-point type;

(iii) be not more than 6 inches in width or 3.5 inches in height;

(iv) include such boldface type and shading as the Secretary considers appropriate;

(v) include such parenthetical statements directing the borrower to the terms of the loan (such as "see terms") as the Secretary considers appropriate, in such places as the Secretary considers appropriate; and

(vi) be located in the upper one-third of the first page of the good faith estimate required under subsection (c) in a manner that allows the identity, address, phone number, and other relevant information of the lender, the identity, address, phone number, and other relevant information of the borrower, and the address of the property for which the federally related mortgage loan is to be made, to be located above the standard form.

* * * * *

ADDITIONAL VIEWS

The undersigned Members of Committee on Financial Services Committee acknowledge the significant work that the Chairman, the Ranking Member, and other Members and staff have done to address some of H.R. 3951's most problematic provisions.

However, we continue to have very serious concerns about the bill, even as revised, and believe that it will hurt rather than help the consumers for which it is intended to provide relief. Never before have we adopted such far-reaching government restrictions and limitations on loan terms and products and underwriting decisions in the private market, that affect the ability of thousands of this country's borrowers to obtain a mortgage loan to finance or refinance their home. While the bill's breadth will affect the mortgage markets serving all segments of our society, its negative impact on the availability and affordability of credit to those borrowers, including minority borrowers, with blemished credit histories, will be most dire.

American consumers must be treated fairly when obtaining mortgage loans and the mortgage crisis clearly revealed organizational weaknesses in the mortgage finance system. These should be addressed by fostering greater understanding by borrowers of loan choices, by improving the regulation of and public knowledge of loan originators, and by ensuring that those persons involved in offering and making loans have a stake in the performance of the loans. But consumers are better off if lenders retain the freedom to offer and consumers have the freedom to choose from the widest range of financial products and options. We are committed to improving the mortgage process to empower consumers to make sound choices among these competing options. H.R. 3915, however, will drastically limit options for consumers, precisely at a time when the markets are already tightening, by imposing stringent restrictions, many of which are subjective, on loans that may be made, and creating severe liability for any lender that makes a loan that might be viewed as outside of those restrictions.

Among our major specific concerns with H.R. 3915 are the following:

Highly Subjective Duties and Standards. The bill creates federal duties for loan originators that are highly subjective, and thus difficult to define for purposes of compliance and potential liability. We remain concerned that any federal duty requiring a loan originator to identify loan products that are "appropriate" for the consumer, including those having a "net tangible benefit," necessitate a determination whether the loan is suitable for the borrower. This type of standard can always be second-guessed, and should be determined by the borrower, after disclosure of the loan terms, not by the originator who is not the agent of the borrower. Even with regulations providing further clarity on terms such as loans with

“predatory characteristics (such as equity stripping, excessive fees, and abusive terms),” the bill will understandably make lenders and assignees highly skittish about making or buying loans other than traditional loans to the most qualified customers. The accommodation of subprime borrowers through flexible underwriting will be sharply curtailed, to the detriment of many borrowers who, experience has shown, can and do repay their loans.

It has been noted that some states, such as North Carolina, have a “net tangible benefit” test in their high cost loan law and it has been suggested that this has not resulted in a reduction in loans. While there are conflicting studies regarding the impact on credit availability of the North Carolina law, the reason there have been few challenges under that law’s net tangible benefit test is because of the unavailability of attorney’s fees in actions brought by borrowers who choose not to accept the lender’s previous offer to cure. H.R. 3915 does not have such a provision which would disallow attorney’s fees in a borrower action. The full impact of other states’ laws has yet to be felt. In any event, creating a federal “net tangible benefit” that applies across the country will undoubtedly cause a much higher focus on this subjective test, resulting in significant claims. Lenders consequently, will be more restrictive in their offerings.

Rebuttable Presumption. The bill creates a presumption that qualified safe harbor loans (those that meet a number of restrictions) will have a “reasonable ability to repay” and a “net tangible benefit,” but that presumption is rebuttable. As a result, there are no safe harbors to ensure lenders in advance of making a loan that the loan is compliant and thus insulated from challenge. Because of the subjective standards mentioned above, lenders will be very hesitant to make loans subject to this presumption because they will be unable to dispose of even unmeritorious litigation through a motion to dismiss, and thus will incur significant additional costs and exposure.

Excessive Potential Liability. The bill creates excessive potential liability for creditors for compliance with the bill’s numerous requirements. In addition to a potential liability of three times the total amount “of direct and indirect compensation or gain accruing” in connection with the violation, which arguably includes all interest and fees, the bill creates an extended rescission right for up to 6 years for certain adjustable rate loans, and potentially allows class action rescission claims against creditors for vague and subjective standards.

Other Restrictions on Loan Terms. The bill contains various provisions that prohibit or severely restrict loan terms that consumers today use to their benefit, including:

- arbitration, which is often fast, fair and affordable relief to consumers, who choose not to go to court; and
- yield spread premiums, on higher cost loans, which has been a valuable mechanism for borrowers to finance upfront broker compensation rather than pay it at closing.

While these mechanisms clearly must be fully disclosed and chosen by a consumer, outlawing them simply restricts the potential pricing package that consumers may choose.

Intrusion into Internal Company Compensation Structures. The bill's prohibition on all types of "incentive compensation" is overbroad, pushing government regulation into companies' internal operations and incentives. We are not aware that the federal government has attempted previously to regulate that intrusively in American business, whether in the financial industry or in any other industry. This unprecedented incursion into the internal operations and incentives of companies is a major departure from U.S. law, both as traditionally applied to lenders and as currently applied to every other industry. Lenders use incentive compensation for numerous legitimate purposes, including aligning employees' incentives with their company's incentives, ensuring that the company can obtain specific products when necessary to meet the terms of required loan sale commitments, when the company wants to readjust its portfolio to meet new strategic or risk objectives, and other purposes.

Interference with State Foreclosure Laws. The bill preempts state foreclosure laws that permit a foreclosing creditor to evict a renter in possession. This will greatly disrupt an investor's ability to transfer a property after foreclosure. Investors will demand higher rates, especially on higher risk loans, to compensate for their increased losses in the case of a foreclosure.

Expansion of HOEPA. Title III's lowering of the HOEPA thresholds, and including many additional items in the "points and fees" calculation, would result in far too many loans falling under HOEPA restrictions. Very few lenders have any appetite for making HOEPA loans, so in effect this would result in the establishment of a low usury ceiling—and one that would unintentionally cause many loans to be unsaleable. (For example, by adding prepayment penalties on pre-existing loans in refinancings to the "points and fees" calculation, lenders may be unable to refinance a loan subject to a prepayment penalty without the loan becoming an unsaleable HOEPA loan).

The combination of the bill's expansion of HOEPA, the subjective standards applicable to the loan origination and underwriting process, and the vastly increased liability will greatly reduce mortgage lending, other than to those borrowers with pristine credit records and substantial downpayments. That appears to be the general expectation of every industry participant with whom we have spoken. The Federal Reserve Board issued a credit scoring study in August that indicated that members of certain minority groups have, on average, substantially below-average credit scores. If that study is an accurate reflection of the credit scores of the overall population, we are very concerned that the reduction of lending that we foresee as a result of the bill will have particularly negative effects on minority applicants and communities. It would be a true shame if this bill, meant to protect American consumers, were to have the effect of making mortgage credit unavailable to many deserving borrowers who want a piece of the American dream.

We are confident that consumers can receive appropriate protections without unduly restricting credit or creating enormous liability for the mortgage lending industry. For the foregoing reasons, however, we believe H.R. 3915 must be significantly changed to achieve that objective.

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PATRICK T. MCHENRY.
SCOTT GARRETT.
JOHN CAMPBELL.
KENNY MARCHANT.
RANDY NEUGEBAUER.

DISSENTING VIEWS

H.R. 3915 is a bill that, in an attempt to improve conditions in the housing market, will end up making it more difficult and more expensive for hard-working Americans to obtain a mortgage. I am afraid that if this bill is adopted into law, its effects would be as severe in the housing market as Sarbanes-Oxley was in the financial industry. Like Sarbanes-Oxley, this is a rushed response to a financial crisis.

I object to the scapegoating of mortgage brokers and lenders that typifies the current legislative response to the subprime housing crisis. The root of this crisis, as with other financial and economic crises, results from the federal government intervention into monetary policy and the housing market, not the actions of market participants. Yet, Congress has failed to identify the causes of the crisis, and instead aims to solve the crisis with more intervention.

The introduction of mandatory fingerprinting and background checks for loan originators is a grave misstep and sets a dangerous precedent. Mandatory background checks and fingerprinting are not a panacea, will not eliminate mortgage fraud, and are an affront to a free and open labor market. Furthermore, by introducing a national mortgage licensing system and registry, Congress would restrict the number of people able to work in the mortgage industry. According to the laws of economics, when the supply of mortgage providers decreases, the cost of retaining those services will increase.

H.R. 3915 also makes restrictions on the types of mortgages which can be offered, utilizing language which is vague enough that its definition will likely be finally determined in time-consuming federal court cases. By restricting the number of people licensed to work in the mortgage industry and the types of mortgages that can be offered, the availability of mortgages would decrease and the cost would increase. H.R. 3915, which has as its purported aim the protection of American homebuyers, would have the perverse effect of keeping more Americans from being able to purchase homes.

The collapse of the housing market has served as a catalyst for much of the recent turbulence in the financial markets, and it appears as though the worst is yet to come. For years the federal government has made it one of its prime aims to encourage homeownership among people who otherwise would not be able to afford homes. Various federal mortgage programs through the FHA, Fannie Mae, and Freddie Mac have distorted the normal workings of the housing market.

The implicit government backing of Fannie Mae and Freddie Mac provides investors an incentive to provide funds to Fannie and Freddie that otherwise would have been put to use in other, more productive sectors of the economy. This flood of investor capital

helped to fuel the housing bubble, which as it implodes is causing concern among both homeowners and investors.

Previous legislation passed by this committee made it possible for people who could not afford down payments on houses to receive assistance from the federal government, or even to pay no down payment at all, courtesy of the taxpayers. The requirement of a down payment has always helped to ascertain the ability of a buyer to pay off a mortgage. It requires the buyer to show hard work and thrift, the ability to delay present consumption in order to make a larger acquisition in the future.

When this requirement is minimized or eliminated, you introduce a new class of homebuyers, people who are unable to budget and save for the purchase of a home, or who should wait for a few years until they have saved enough to purchase a home. Federal policies have encouraged investors, lenders, and brokers to cater to these people, so it is no surprise that market actors came up with ever more sophisticated means of bringing these people into the real estate market. The implicit backing of Fannie Mae and Freddie Mac attracted unsavory characters, much as any other federal gravy train. This does not reflect badly on the market, but rather on the government policies which incentivize such behavior. Ironically, today Congress is attacking brokers for providing mortgages to people who arguably could not afford them, when these brokers were merely following the lead of Congress.

Finally, legislative solutions to the housing crisis fail to take into account that fact that the Federal Reserve's loose monetary policy and lowering of interest rates were a major spur to the housing boom. Low interest rates influence marginal buyers, those who are sitting on the fence, and encourage them to take on a mortgage that they otherwise would not. Even when interest rates are raised, no one expects them to stay high for long, as there is always pressure from politicians and investors to keep rates low, as no one wants the cheap credit to end.

Thinking that interest rates will cycle from low to higher, back to low, lenders begin to offer adjustable rate mortgages and other sophisticated mechanisms that may trap many unsavvy buyers. Buyers hope for low interest rates, lenders hope for higher rates, and many homebuyers, lenders, and investors have been harmed as a result of their attempts to foresee the Fed's cyclical policy. Some people might frown on these types of mortgages as excessively risky or even predatory. Risk, however, is endemic to every action in the marketplace, and no amount of legislation will change that fact.

In conclusion, it is time for the federal government to get out of legislating and regulating the housing and mortgage industry. Through interventionist federal legislation we laid the groundwork for the housing bubble, and any attempts at reform that fail to address the causes of our current problem will only exacerbate the problem. H.R. 3915 is no exception, and will only serve to add addi-

tional unnecessary complexity to an already over-regulated industry.

RON PAUL.

