111th Congress

1st Session

H. RES. ___

Providing for consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

December 8, 2009

Mr. Perlmutter, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed.

RESOLUTION

Providing for consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes. The first reading of the bill shall be dispensed with. All points of order against consideration of the bill are waived except those arising under clause 9 or 10 of rule XXI. The amendment printed in the report of the Committee on Rules accompanying this resolution shall be considered as adopted in the House and in the Committee of the Whole. General debate shall be confined to the bill, as amended, and shall not exceed three hours, with two hours equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services, 30 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Agriculture, and 30 minutes equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. After general debate, the Committee of the Whole shall rise without motion. No further consideration of the bill shall be in order except pursuant to a subsequent order of the House.

Sec. 2. During consideration of H.R. 4173 pursuant to this resolution, the Chair of the Committee of the Whole may entertain a motion that the Committee rise only if offered by the chair of the Committee on Financial Services or his designee.

111th Congress }
1st Session }

HOUSE OF REPRESENTATIVES

{Report
{
{No. _____

Providing for consideration of the bill (H.R. 4173) to provide for financial regulatory reform, to protect consumers and investors, to enhance Federal understanding of insurance issues, to regulate the over-the-counter derivatives markets, and for other purposes.

December 8, 2009.-Referred to the House Calendar and ordered to be printed

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Mr. Perlmutter, from the Committee on Rules,
submitted the following

REPORT

[To accompany H. Res. _____]

The Committee on Rules, having had under consideration House Resolution ____, by a non-record vote, report the same to the House with the recommendation that the resolution be adopted.

SUMMARY OF PROVISIONS OF THE RESOLUTION

The resolution provides for consideration of H.R. 4173, the "Wall Street Reform and Consumer Protection Act of 2009." The resolution provides three hours of general debate with two hours to be equally divided and controlled by the chair and ranking minority member of the Committee on Financial Services, 30 minutes to be equally divided and controlled by the chair and ranking minority member of the Committee on Agriculture, and 30 minutes to be equally divided and controlled by the chair and ranking minority member of the Committee on Energy and Commerce. The resolution waives all points of order against consideration of the bill except those arising under clause 9 and 10 of rule XXI.

The resolution provides that the amendment printed in this report shall be considered as adopted in the House and in the Committee of the Whole. The resolution provides that the Committee of the Whole shall rise without motion after general debate and that no further consideration of the bill shall occur except pursuant to a subsequent order of the House. The resolution also provides that the Chair of the Committee of the Whole may entertain a motion that the Committee rise only if offered by the chair of the Committee on Financial Services or his designee.

EXPLANATION OF WAIVERS

Although the rule waives all points of order against consideration of the bill (except for clauses 9 and 10 of rule XXI), the Committee is not aware of any points of order. The waiver is prophylactic.

Summary of amendment to be considered as adopted

The amendment addresses jurisdictional concerns among the committees of jurisdiction affected by H.R. 4173. The amendment also contains a revised version of HR 1728, the Mortgage Reform and Anti-Predatory Lending Act of 2009, which was passed by the House on May 7, 2009 by a vote of 300-114, updated to conform with the pending legislation. The amendment includes reverse mortgages in the definition of a 'qualified mortgage' subject to provisions of the Truth in Lending Act (TILA). The amendment also makes the bill paygo compliant.

Text of the amendment to be considered as adopted

AMENDMENT TO H.R. 4173

OFFERED BY _____

Page 13, line 16, strike "and".

Page 13, line 18, strike the period and insert "; and" and after such line insert the following:

1 (C) that is not a Farm Credit System in-
2 stitution chartered under and subject to the
3 provisions of the Farm Credit Act of 1971, as
4 amended (12 U.S.C. 2001 et seq.).

Page 18, line 4, insert "any retail foreign exchange dealer," after "adviser,".

Page 18, beginning on line 12, strike "organization" and insert "organization, designated contract market, or swap execution facility".

Page 28, line 9, after "report to" insert the following: "the Committee on Ways and Means, the Committee on Agriculture, and".

Page 28, line 10, strike "Representatives," and insert "Representatives and the Committee on Finance, the Committee on Agriculture, and".

Page 29, line 13, insert before "Committee" the following: "Committee on Ways and Means, the Committee on Agriculture, and the".

Page 29, line 14, insert before "Committee" the following: "Committee on Finance, the Committee on Agriculture, and the".

Page 29, line 23, after "to the" insert the following: "Committee on Ways and Means, the Committee on Agriculture, and the".

Page 29, line 25, after "and the" insert the following: "Committee on Finance, the Committee on Agriculture, and the".

Page 30, line 5, after "to the" insert the following: "Committee on Ways and Means, the Committee on Agriculture, and the".

Page 30, line 7, after "and the" insert the following: "Committee on Finance, the Committee on Agriculture, and the".

Page 104, beginning on line 6, strike ", unless the President" and all that follows through page 110, line 7, and insert a period.

Page 277, line 22, strike the period and insert "; and" and after such line insert the following:

1 (C) that is not a Farm Credit System in-
2 stitution chartered under and subject to the
3 provisions of the Farm Credit Act of 1971, as
4 amended (12 U.S.C. 2001 et seq.).

Page 383, strike line 21 and all that follows through page 384, line 2, and insert the following:

5 (9) EXEMPT TAX STATUS.—
6 (A) EXEMPTION FROM FEDERAL INCOME
7 TAX.—Subsection (l) of section 501 of the In-
8 ternal Revenue Code of 1986 is amended by
9 adding at the end the following new paragraph:
10 "(4) Any bridge financial company organized
11 under section 1609(h) of the Financial Stability Im-
12 provement Act of 2009.".
13 (B) EXEMPTION FROM CERTAIN OTHER
14 TAXES.—Notwithstanding any other provision
15 of Federal or State law, a bridge financial com-
16 pany, its franchise, property, and income shall
17 be exempt from all taxation now or hereafter
18 imposed by any territory, dependency, or pos-
19 session of the United States, or by any State,
20 county, municipality, or local taxing authority.

Page 416, beginning on line 16, strike "shall be introduced in the House" and all that follows through "mi-

nority leader of the Senate" and insert "shall be introduced in the House by the majority leader of the House and in the Senate by the majority leader of the Senate".

Page 417, line 21, insert "for the majority leader" after "resolution,".

Page 437, line 25, strike "Congress" and insert "House of Representatives and the Senate".

Page 440, beginning on line 25, strike "and minority leader of the House".

Page 441, beginning on line 2, strike "and minority leader of the Senate".

Page 441, line 20, strike "each committee" and insert "all committees".

Page 441, line 21, strike "reports" and insert "have reported".

Page 441, line 22, strike "has been" and insert "have been".

Page 442, line 1, insert "for the majority leader" after "resolution,".

Page 443, beginning line 12, strike "resolution" and insert "resolution in the Senate".

Page 443, line 14, insert "in the Senate" after "introduction".

Page 446, line 14, insert "on adoption" after "fails".

Page 448, line 9, strike "use of authority relevant to".

Page 665, strike lines 19 and 20 and insert the following:

1 (2) AGENCY.—The term "Agency" means—
2 (A) before the Agency conversion date, the
3 Consumer Financial Protection Agency; and
4 (B) on and after the Agency conversion
5 date, the commission established under section
6 4103.

Page 668, strike lines 22 and 23 and insert the following:

7 (15) DIRECTOR.—The term "Director"
8 means—
9 (A) before the Agency conversion date, the
10 Director of the Agency; and
11 (B) on and after the Agency conversion
12 date, the commission established under section
13 4103.

Page 676, strike line 23 and all that follows through page 677, line 3, and insert the following:

1 (aa) the activity is financial
2 in nature or is otherwise a per-
3 missible activity for a bank or
4 bank holding company, including
5 a financial holding company,
6 under any provision of Federal
7 law or regulation applicable to a
8 bank or bank holding company,
9 including a financial holding
10 company;

Page 678, beginning on line 8, strike "BUSINESS OF INSURANCE EXCEPTION"and insert "EXCEPTIONS".

Page 678, line 10, insert before the period the following: " or the provision of electronic data transmission, routing, intermediate or transient storage, or connections to a system or network, where the person providing such services does not select or modify the content of the electronic data, is not the sender or the intended recipient of the data, and such person transmits, routes, stores, or provides connections for electronic data, including financial data, in a manner that such data is undifferentiated

from other types of data that such person transmits, routes, stores, or provides connections".

Page 680, line 24, strike "or".

Page 680, line 24, strike "to the extent" and insert ", retail foreign exchange dealer, or swap execution facility to the extent".

Page 687, after line 9, insert the following new paragraph:

1 (38) AGENCY CONVERSION DATE.—The term
2 "Agency conversion date" means the date that is
3 two years after the designated transfer date.

Page 687, after line 18, insert the following new subsection (and redesignate succeeding subsections accordingly):

4 (b) AGENCY STRUCTURE.—
5 (1) INITIAL STRUCTURE.—The Agency shall be
6 led by a Director or Acting Director, established
7 pursuant to section 4102, until the day before the
8 Agency conversion date.
9 (2) SUBSEQUENT STRUCTURE.—On and after
10 the Agency conversion date, the Agency shall consist
11 of the commission established under section 4103.

Page 688, line 9, insert before the period the following: "and shall exercise any authorities granted under this title and all other laws within the Director's jurisdiction".

Page 688, strike lines 11 through 14 and insert the following (and redesignate succeeding paragraphs accordingly):

1 (1) NOMINATION.—Within 60 days after the
2 date of enactment of this title, the President shall
3 nominate the Director, from among individuals
4 who—
5 (A) are citizens of the United States; and
6 (B) have strong competencies and experi-
7 ences related to consumer financial protection.
8 (2) APPOINTMENT SUBJECT TO CONFIRMA-
9 TION.—The Director nominated under paragraph
10 (1) shall be appointed by and with the advice and
11 consent of the Senate
12 (3) ACTING DIRECTOR BEFORE SENATE CON-
13 FIRMATION.—The individual nominated pursuant to
14 paragraph (1) shall serve as Acting Director with
15 full authorities granted to the Director under this
16 title until the Director is confirmed by the Senate.

Page 688, line 16, strike "of 5 years" and insert "that ends on the Agency conversion date".

Page 688, line 24, strike "paragraph (1)" and insert "paragraph (2)".

Page 689, beginning on line 4, strike "In the event of a vacancy in the position of Director or during the absence or disability of the Director" and insert "In the event of vacancy or during the absence of the Director (who has been confirmed by the Senate pursuant to paragraph (2))".

Page 690, before line 1, insert the following new section (and redesignate succeeding sections accordingly):

1 **SEC. 4103. ESTABLISHMENT AND COMPOSITION OF THE**
2 **COMMISSION.**
3 (a) ESTABLISHMENT OF THE COMMISSION.—
4 (1) IN GENERAL.—On the Agency conversion
5 date, there shall be established a commission (here-
6 inafter in this section referred to as the "Commis-
7 sion") that shall by operation of law succeed to all
8 of the authorities of the Director of the Agency
9 granted under this title and any other law.
10 (2) AUTHORITY TO PRESCRIBE REGULA-
11 TIONS.—The Commission may prescribe such regu-
12 lations and issue such orders in accordance with this

1 title as the Commission may determine to be nec-
2 essary for carrying out this title and all other laws
3 within the Commission's jurisdiction and shall exer-
4 cise any authorities granted under this title and all
5 other laws within the Commission's jurisdiction.
6 (b) COMPOSITION OF THE COMMISSION.—
7 (1) IN GENERAL.—The Commission shall be
8 composed of 5 members who shall be appointed by
9 the President, by and with the advice and consent
10 of the Senate, from among individuals who—
11 (A) are citizens of the United States; and
12 (B) have strong competencies and experi-
13 ences related to consumer financial protection.
14 (2) INITIAL APPOINTMENTS.—
15 (A) IN GENERAL.—The initial members of
16 the Commission, other than the initial Chair,
17 may be appointed by the President, by and with
18 the advice and consent of the Senate, prior to
19 the Agency conversion date, but may not serve
20 in their positions until such date.
21 (B) STAGGERING.—Except as provided
22 under subsection (d)(1), the members of the
23 Commission shall serve staggered terms, which
24 initially shall be established by the President
25 for terms of 1, 2, 4, and 5 years, respectively.

1 (3) TERMS.—

2 (A) IN GENERAL.—Except as provided in
3 subsection (d)(1), each member of the Commis-
4 sion, including the Chair, shall serve for a term
5 of 5 years.

6 (B) REMOVAL FOR CAUSE.—The President
7 may remove any member of the Commission
8 only for inefficiency, neglect of duty, or malfea-
9 sance in office.

10 (C) VACANCIES.—Any member of the
11 Commission appointed to fill a vacancy occur-
12 ring before the expiration of the term to which
13 that member's predecessor was appointed (in-
14 cluding the Chair) shall be appointed only for
15 the remainder of the term.

16 (D) CONTINUATION OF SERVICE.—Each
17 member of the Commission may continue to
18 serve after the expiration of the term of office
19 to which that member was appointed until a
20 successor has been appointed by the President
21 and confirmed by the Senate, except that a
22 member may not continue to serve more than 1
23 year after the date on which that member's
24 term would otherwise expire.

1 (E) OTHER EMPLOYMENT PROHIBITED.—
2 No member of the Commission shall engage in
3 any other business, vocation, or employment.
4 (c) AFFILIATION.—With respect to members ap-
5 pointed pursuant to subsection (b), not more than 3 shall
6 be members of any one political party.
7 (d) CHAIR OF THE COMMISSION.—
8 (1) APPOINTMENT.—
9 (A) INITIAL CHAIR.—The first Chair of the
10 Commission shall be the Director or Acting Di-
11 rector serving on the day before the Agency
12 conversion date, and such individual shall serve
13 in the position of Chair for a period of 3 years.
14 (B) SUBSEQUENT CHAIRS.—Subsequent
15 chairs shall be appointed by the President from
16 among the members of the Commission to serve
17 as the Chair.
18 (2) AUTHORITY.—The Chair shall be the prin-
19 cipal executive officer of the Agency, and shall exer-
20 cise all of the executive and administrative functions
21 of the Agency, including with respect to—
22 (A) the appointment and supervision of
23 personnel employed under the Agency (other
24 than personnel employed regularly and full time

1 in the immediate offices of members of the
2 Commission other than the Chair);
3 (B) the distribution of business among per-
4 sonnel appointed and supervised by the Chair
5 and among administrative units of the Agency;
6 and
7 (C) the use and expenditure of funds.
8 (3) LIMITATION.—In carrying out any of the
9 Chair's functions under the provisions of this sub-
10 section the Chair shall be governed by general poli-
11 cies of the Commission and by such regulatory deci-
12 sions, findings, and determinations as the Commis-
13 sion may by law be authorized to make.
14 (4) REQUESTS OR ESTIMATES RELATED TO AP-
15 PROPRIATIONS.—Requests or estimates for regular,
16 supplemental, or deficiency appropriations on behalf
17 of the Commission may not be submitted by the
18 Chair without the prior approval of the commission.
19 (e) NO IMPAIRMENT BY REASON OF VACANCIES.—
20 No vacancy in the members of the Commission shall im-
21 pair the right of the remaining members of the Commis-
22 sion to exercise all the powers of the Commission. Three
23 members of the Commission shall constitute a quorum for
24 the transaction of business, except that if there are only
25 3 members serving on the Commission because of vacan-

1 cies in the Commission, 2 members of the Commission
2 shall constitute a quorum for the transaction of business.
3 If there are only 2 members serving on the Commission
4 because of vacancies in the Commission, 2 members shall
5 constitute a quorum for the 6-month period beginning on
6 the date of the vacancy which caused the number of Com-
7 mission members to decline to 2.

8 (f) SEAL.—The Commission shall have an official
9 seal.

10 (g) COMPENSATION.—

11 (1) CHAIR.—The Chair shall receive compensa-
12 tion at the rate prescribed for level I of the Execu-
13 tive Schedule under section 5313 of title 5, United
14 States Code.

15 (2) OTHER MEMBERS OF THE COMMISSION.—
16 The 4 other members of the Commission shall each
17 receive compensation at the rate prescribed for level
18 II of the Executive Schedule under section 5314 of
19 title 5, United States Code.

20 (h) INITIAL QUORUM ESTABLISHED.—During any
21 time period prior to the confirmation of at least two mem-
22 bers of the Commission under subsection (b)(2), one mem-
23 ber of the Commission shall constitute a quorum for the
24 transaction of business. Following the confirmation of at

1 least 2 additional commissioners, the quorum require-
2 ments of subsection (e) shall apply.
3 (i) DEFINITIONS.—Notwithstanding section 4002,
4 for purposes of this section:
5 (1) AGENCY.—The term "Agency" means the
6 Consumer Financial Protection Agency.
7 (2) DIRECTOR.—The term "Director" means
8 the Director of the Agency.

Page 700, line 18, insert before "other Federal" the following: "the Federal Trade Commission,".

Page 723, after line 19, insert the following:

9 (D) OFFSETTING COLLECTIONS.—Fees as-
10 sessed under this paragraph—
11 (i) shall not be collected for any fiscal
12 year except to the extent provided in ad-
13 vance in appropriation Acts; and
14 (ii) shall be deposited and credited as
15 offsetting collections to the account pro-
16 viding appropriations to the Agency.

Page 730, strike lines 11 through page 731, line 3, and insert the following:

17 (3) USE OF FUNDS.—
18 (A) DEPOSITORY INSTITUTION FUND.—
19 Funds obtained by, transferred to, or credited

1 to the Consumer Financial Protection Agency
2 Depository Institution Fund shall be imme-
3 diately available to the Agency, and remain
4 available until expended, to pay the expenses of
5 the Agency in carrying out the duties and re-
6 sponsibilities of the Director and the Agency,
7 including the payment of compensation of the
8 Director and officers and employees of the
9 Agency.
10 (B) NONDEPOSITORY INSTITUTION
11 FUND.—Funds obtained by, transferred to, or
12 credited to the Consumer Financial Protection
13 Agency Nondepository Institution Fund shall be
14 available to the Agency to the extent provided
15 in advance in appropriation Acts, and may re-
16 main available until expended, to pay the ex-
17 penses of the Agency in carrying out the duties
18 and responsibilities of the Director and the
19 Agency, including the payment of compensation
20 of the Director and officers and employees of
21 the Agency.

Page 747, after line 21, insert the following:

22 (i) PRESERVATION OF FARM CREDIT ADMINISTRA-
23 TION AUTHORITY.—No provision of this title shall be con-

1 strued as modifying, limiting, or otherwise affecting the
2 authority of the Farm Credit Administration.

Page 712, line 19, after "Treasury" insert "the Federal Trade Commission,".

Page 714, beginning on line 13, strike "its central database on complaints".

Page 716, line 6, after "Services" insert "and the House Committee on Energy and Commerce".

Page 716, after line 11, insert the following new section (and redesignate succeeding sections accordingly):

3 **SEC. 4110. GAO SMALL BUSINESS STUDIES.**

4 (a) STUDIES REQUIRED.—Not later than the end of
5 the 3-year period beginning on the designated transfer
6 date, and also 3 years thereafter, the Comptroller General
7 of the United States shall carry out a study to examine
8 the effects that regulations issued by the Agency have on
9 small businesses.

10 (b) REPORT.—At the conclusion of each study re-
11 quired under subsection (a), the Comptroller General of
12 the United States shall issue a report to the Congress con-
13 taining the finding and determinations made by the Comp-
14 troller General in carrying out such study.

Page 724, strike line 2 and insert the following: "$200,000,000 for each of fiscal years 2010, 2011, 2012, 2013, and 2014.".

Page 743, strike line 14 and all that follows through page 745, line 14, and insert the following:

1 (1) THE AGENCY TO HAVE PRIMARY ENFORCE-
2 MENT AUTHORITY.—To the extent that a Federal
3 law authorizes the Agency and another Federal
4 agency to enforce a provision of a law, the Agency
5 shall have primary enforcement authority to enforce
6 the provision of that Federal law with respect to any
7 person in accordance with this subsection.
8 (2) COORDINATION WITH THE FEDERAL TRADE
9 COMMISSION.—
10 (A) NOTICE.—If the Federal Trade Com-
11 mission is authorized to enforce any Federal
12 law described in paragraph (1), or a regulation
13 prescribed under any such Federal law, either
14 the Agency or the Federal Trade Commission
15 shall serve written notice to the other of any en-
16 forcement action prior to initiating such an en-
17 forcement action, except that if the agency or
18 commission filing the action determines that
19 prior notice is not feasible, that agency or com-

1 mission may provide notice immediately upon
2 initiating such enforcement action.
3 (B) INTERVENTION BY EITHER ENTITY.—
4 Upon receiving any notice under subparagraph
5 (A) with respect to an enforcement action, the
6 Agency or Federal Trade Commission may in-
7 tervene in such enforcement action, and upon
8 intervening—
9 (i) be heard on all matters arising in
10 such enforcement action; and
11 (ii) file petitions for appeal in such
12 enforcement action.
13 (C) PENDENCY OF ACTION.—Whenever a
14 civil action has been instituted by or on behalf
15 of the Agency or the Federal Trade Commission
16 for any violation of any Federal law described
17 in paragraph (1), or a regulation prescribed
18 under any such Federal law, the other entity
19 may not, during the pendency of that action, in-
20 stitute a civil action under such law or regula-
21 tion against any defendant named in the com-
22 plaint in such pending action for any violation
23 alleged in the complaint.
24 (D) AGREEMENTS BETWEEN ENTITIES.—

1 (i) NEGOTIATIONS AUTHORIZED.—
2 The Agency and the Federal Trade Com-
3 mission may negotiate an agreement to es-
4 tablish procedures to ensure that the en-
5 forcement actions of the 2 agencies are ap-
6 propriately coordinated.
7 (ii) SCOPE OF NEGOTIATED AGREE-
8 MENT.—The terms of any agreement nego-
9 tiated pursuant to clause (i) may modify or
10 supersede the provisions of subparagraphs
11 (A), (B), and (C).

Page 761, after line 13, insert the following new paragraph (and redesignated the succeeding paragraphs accordingly):

12 (2) NO EXCLUSION FOR CERTAIN PRIVATE EDU-
13 CATION LOANS.—Paragraph (1) shall not apply to
14 any private education loan (as defined in section
15 140(a) of the Truth in Lending Act) provided by a
16 private educational lender (as defined in such sec-
17 tion), including a covered educational institution (as
18 defined in such section).

Page 766, strike line 17 and all that follows through page 768, line 3, and insert the following (and redesignate succeeding subsections accordingly):

1 (f) EXCLUSION FOR PERSONS REGULATED BY THE
2 FARM CREDIT ADMINISTRATION.—No provision of this
3 title shall be constructed as altering, amending, or affect-
4 ing the authority of the Farm Credit Administration to
5 adopt rules, institute enforcement proceedings, or take any
6 other action with respect to a person regulated by the
7 Farm Credit Administration. The Director and Agency
8 shall have no authority to exercise any power to enforce
9 this title, compel registration, or to order assessments with
10 respect to a person regulated by the Farm Credit Adminis-
11 tration. For purposes of this subsection, the term "person
12 regulated by the Farm Credit Administration" means any
13 Farm Credit System Institution.
14 (g) EMPLOYEE BENEFIT AND COMPENSATION PLANS
15 AND CERTAIN OTHER ARRANGEMENTS UNDER THE IN-
16 TERNAL REVENUE CODE OF 1986.—
17 (1) AUTHORITY RETAINED BY OTHER AGEN-
18 CIES.—No provision of this title shall be construed
19 as altering, amending, or affecting the authority of
20 the Secretary of the Treasury, the Secretary of
21 Labor, or the Commissioner of Internal Revenue to
22 adopt regulations, initiate enforcement proceedings,
23 or take any actions with respect to any specified
24 plan or arrangement.

1 (2) ACTIVITIES NOT CONSTITUTING FINANCIAL
2 ACTIVITIES.—For the purposes of this title, a person
3 shall not be treated as having engaged in a financial
4 activity, as defined in section 4002(19), solely be-
5 cause such person is a specified plan or arrangement
6 or is engaged in the activity of establishing or main-
7 taining, for the benefit of employees of such person
8 (or for members of an employee organization), any
9 specified plan or arrangement.
10 (3) REGULATORY COORDINATION.—In the case
11 of regulations promulgated under this title that ad-
12 dress any financial activity specifically pertaining to
13 the administration and maintenance of a specified
14 plan or arrangement, the Director shall coordinate
15 with the Secretary of Labor and the Secretary of
16 Treasury, as appropriate.
17 (4) SPECIFIED PLAN OR ARRANGEMENT.—For
18 purposes of this subsection, the term "specified plan
19 or arrangement" means any plan, account, or ar-
20 rangement described in section 220, 223, 401(a),
21 403(a), 403(b), 408, 408A, 529, or 530 of the Inter-
22 nal Revenue Code of 1986, or any employee benefit
23 or compensation plan or arrangement, including a
24 plan that is subject to title I of the Employee Retire-
25 ment Income Security Act of 1974.

Page 785, after line 6, insert the following new paragraph (and redesignate succeeding paragraphs accordingly):

1 (4) CONSULTATION WITH THE FEDERAL TRADE
2 COMMISSION.—In developing and implementing re-
3 port requirements under this subsection, the Agency
4 shall consult with the Federal Trade Commission,
5 where appropriate.

Page 800, line 2, insert after the period the following: "Nothing in this section shall be construed as limiting or superseding the protection provided to any provider or user qualifying for protection under section 230(c)(1) of the Communications Act of 1934 (47 U.S.C. 230(c)(1))".

Page 895, line 22, insert after the period the following: "This transfer shall not be subject to the provisions of section 3503 of title 5, United States Code".

Page 895, strike line 23 and all that follows through page 896, line 15, and insert the following:

6 (B) FEDERAL TRADE COMMISSION AU-
7 THORITY.—The Agency shall have all powers
8 and duties that were vested in the Federal
9 Trade Commission that were contained within
10 the enumerated statutes, except as provided in

1 section 4202(e), on the day before the des-
2 ignated transfer date.

Page 898, strike line 23 and all that follows through page 901, line 3, and insert the following:

3 **SEC. 4604. DESIGNATED TRANSFER DATE.**
4 The designated transfer date shall be 180 days after
5 the date of enactment of this title.

Page 903, strike lines 5 through 7 and insert the following:

6 (c) FEDERAL TRADE COMMISSION.—Section
7 4601(a)(5) shall

Page 903, strike lines 17 through 25.

Page 934, beginning on line 19, strike "is confirmed by the Senate".

Page 1019, line 20, insert before the period the following: "Nothing in this section shall be construed as limiting or superseding the protection provided to any provider or user qualifying for protection under section 230(c)(1) of the Communications Act of 1934 (47 U.S.C. 230(c)(1)".

Page 1020, line 4-5, strike "(without regard to any reference in such section to sections 556 and 557 of such title)".

Page 1020, after line 13, insert the following (and redesignate the succeeding paragraph accordingly):

1 (4) in subsection (c) (as redesignated), by in-
2 serting "prescribed" after "rule".

Page 1020, after line 14, insert the following (and redesignate succeeding subparagraphs accordingly):

3 (A) in paragraph (1)(A) by striking "pro-
4 mulgated" and inserting "prescribed";

Page 1020, after line 20, insert the following:

5 (d) Section 16(a)(2) of the Federal Trade Commis-
6 sion Act (15 U.S.C. 56(a)(2)) is amended—
7 (1) in subparagraph (D), by striking "; or" and
8 inserting a semicolon; and
9 (2) by inserting after subparagraph (E) the fol-
10 lowing:
11 "(F) to obtain a civil penalty authorized
12 under any provision of law enforced by the
13 Commission.".

1 (e) Section 5(l) of the Federal Trade Commission Act
2 (15 U.S.C. 45(l)) is amended in the first sentence by in-
3 serting "the Commission or" after "brought by".

Strike section 7511.

Page 123, after line 2, insert the following new section:

4 **SEC. 1118. ANTITRUST SAVINGS CLAUSE.**

5 Nothing in this subtitle shall be construed to modify,
6 impair, or supercede the operation of any of the antitrust
7 laws. For purposes of the preceding sentence, the term
8 "antitrust laws" has the meaning given such term in sub-
9 section (a) of the first section of the Clayton Act, except
10 that such term includes section 5 of the Federal Trade
11 Commission Act to the extent that such section relates to
12 unfair methods of competition.

Page 253, line 23, strike "8(c)(5)" and insert "8(c)".

Page 253, line 24, strike "1828(c)(5)" and insert "1828(c)".

Page 254, line 1, insert after "(1)" the following: "in paragraph (5),".

Page 254, line 2, strike "; and" and insert a semicolon.

Page 254, line 3, insert after "(2)" the following: "in paragraph (5),".

Page 254, line 9, strike the period and insert "; and".

Page 254, after line 9, insert the following new paragraph:

1 (3) in paragraph (7)(B), by inserting "subpara-
2 graphs (A) and (B) of" before "paragraph".

Page 274, strike lines 3 through 6 and insert the following:

3 **SEC. 1601. SHORT TITLE; PURPOSE.**

4 (a) SHORT TITLE.—This subtitle may be cited as the
5 "Dissolution Authority for Large, Interconnected Finan-
6 cial Companies Act of 2009".

7 (b) PURPOSE.—The purpose of this subtitle is to pro-
8 tect the financial system of the United States in times of
9 severe crisis by providing for the orderly resolution of
10 large, interconnected financial companies whose failure
11 could create, or increase, the risk of significant liquidity,
12 credit, or other financial problems spreading among finan-
13 cial institutions or markets and thereby threaten the sta-
14 bility of the overall financial system of the United States.
15 There shall be a strong presumption that resolution under
16 the bankruptcy laws will remain the primary method of

1 resolving financial companies, and the authorities con-
2 tained in this subtitle will only be used in the most exigent
3 circumstances.

Page 282, line 15, after "Urban Affairs" insert "and the Committee on the Judiciary".

Page 282, line 16, after "Financial Services" insert "and the Committee on the Judiciary".

Page 290, line 20, strike "The Corporation's" and insert the following:

4 (a) TERMINATION AND EXCLUSION OF BANK-
5 RUPTCY.—The Corporation's

Page 290, line 21, strike "title" and insert "subtitle".

Page 291, after line 4, insert the following new subsections:

6 (b) CONVERSION TO BANKRUPTCY.—
7 (1) CONVERSION.—The Corporation may at any
8 time, with the approval of the Secretary and after
9 consulting with the Council, convert the receivership
10 of a covered financial company to a proceeding
11 under chapter 7 or 11 of title 11, United States
12 Code, by filing a petition against the covered finan-
13 cial company under section 303(m) of such title. The

1 Corporation may serve as the trustee for the covered
2 financial company in bankruptcy.
3 (2) BRIDGE FINANCIAL COMPANY.—The Cor-
4 poration's exercise of authority under paragraph (1)
5 shall not affect any powers or duties of the Corpora-
6 tion with regard to any bridge financial company es-
7 tablished under section 1609(h).
8 (c) REPORTING TO THE CONGRESS.—
9 (1) IN GENERAL.—
10 (A) INITIAL REPORT.—Upon the appoint-
11 ment of the Corporation as receiver under sec-
12 tion 1604(a), the Corporation shall issue a re-
13 port on the issue described under paragraph
14 (3)(A).
15 (B) CONTINUING REPORTS.—At the end of
16 each 180-day period after the appointment of
17 the Corporation as receiver under section
18 1604(a), and continuing while the Corporation
19 is acting as receiver, the Corporation shall issue
20 a report on the issues described under subpara-
21 graphs (A) through (C) of paragraph (3).
22 (2) COMMITTEES TO RECEIVE REPORTS.—Re-
23 ports issued under this subsection shall be issued to
24 the Committee on Banking, Housing, and Urban Af-
25 fairs and the Committee on the Judiciary of the

1 Senate and the Committee on Financial Services and
2 the Committee on the Judiciary of the House of
3 Representatives.
4 (3) REPORTING ISSUES.—
5 (A) Why the receivership should continue
6 instead of converting the receivership into a
7 proceeding under chapter 7 or 11 of title 11,
8 United States Code.
9 (B) The extent to which unsecured credi-
10 tors are likely to receive at least as much as
11 they would receive if the receivership of the cov-
12 ered financial company was converted to a case
13 under chapter 7 of title 11, United States Code.
14 (C) An explanation of each instance where
15 the Corporation as receiver of a covered finan-
16 cial company waived the requirement of 12
17 C.F.R. Part 366 with respect to conflicts of in-
18 terest by any person in the private sector who
19 was retained to provide services to the Corpora-
20 tion in connection with such receivership.

Page 291, line 6, after "may" insert the following: ", after following the notice and comment rulemaking requirements under the Administrative Procedure Act,".

Page 295, beginning on line 11, strike "If a filing" and all that follows through the end of the subclause and

insert the following: "If notification under section 7A of the Clayton Act is required with respect to such transaction, then the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under subsection (b)(2) of such section, or is extended pursuant to subsection (e)(2) of such section.".

Page 296, beginning on line 4, strike "1 or more of the covered financial companies" and insert "the covered financial company".

Page 296, line 6, strike "approvals and filings" and insert "approval and prior notification".

Page 296, line 8, strike "transactions" and insert "transaction".

Page 296, line 10, insert the following after the period: "The preceding sentence shall not otherwise modify, impair, or supercede the operation of any of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 relates to unfair methods of competition).".

Page 299, after line 14, insert the following new subparagraph:

1 (M) APPOINTMENT OF CONSUMER PRIVACY
2 ADVISOR.—
3 (i) APPOINTMENT.—Upon the ap-
4 pointment of the Corporation as receiver
5 under section 1604(a), the Corporation
6 shall appoint a Consumer Privacy Advisor.
7 (ii) DUTIES.—The Consumer Privacy
8 Advisor appointed under clause (i) shall
9 advise the Corporation with respect to—
10 (I) the covered financial com-
11 pany's consumer privacy policies;
12 (II) the potential losses or gains
13 of privacy to consumers upon any
14 sale, lease, or other transfer of mate-
15 rial assets of the covered financial
16 company;
17 (III) the potential costs or bene-
18 fits to consumers upon any sale, lease,
19 or other transfer of material assets of
20 the covered financial company; and
21 (IV) the potential alternatives
22 that would mitigate potential privacy
23 loses or potential costs to consumers.

Page 301, line 2, after "shall" insert the following: ", after following the notice and comment rulemaking requirements under the Administrative Procedure Act,".

Page 324, after line 12, insert the following new subparagraphs (and redesignated succeeding subparagraphs accordingly):

1 (C) Wages, salaries, or commissions, in-
2 cluding vacation, severance, and sick leave pay
3 earned by an individual (other than manage-
4 ment responsible for the failed condition of the
5 covered financial company who have been re-
6 moved), subject to the limitations for such pay-
7 ments contained in title 11, United States
8 Code, including the amount (11 U.S.C.
9 507(a)(4)) and restrictions on severance pay-
10 ments to insiders (11 U.S.C. 503(c)).
11 (D) Contributions to employee benefit
12 plans, subject to the limitations in title 11,
13 United States Code (11 U.S.C. 507(a)(5)).

Page 324, line 15, strike "(D)" and insert "(F)".

Page 324, line 19, strike "(E)" and insert "(G)".

Page 327, after line 8, insert the following new paragraph:

1 (5) RULEMAKING.—The Corporation shall,
2 after following the notice and comment rulemaking
3 requirements under the Administrative Procedure
4 Act, prescribe rules to carry out this section.

Page 369, after line 3, insert the following new paragraph:

5 (16) AUTHORITY REGARDING COLLECTIVE BAR-
6 GAINING AGREEMENTS.—The Corporation as re-
7 ceiver for any covered financial company shall not
8 disaffirm or repudiate any collective bargaining
9 agreement to which the covered financial company is
10 a party unless the Corporation determines that repu-
11 diation is necessary for the orderly resolution of the
12 covered financial company after taking into consider-
13 ation the cost to taxpayers and the financial stability
14 of the United States.

Page 384, beginning on line 18, strike "If a filing" and all that follows through the end of the subparagraph and insert the following: "If notification under section 7A of the Clayton Act is required with respect to such transaction, then the required waiting period shall end on the 15th day after the date on which the Attorney General and the Federal Trade Commission receive such notification, unless the waiting period is terminated earlier under

subsection (b)(2) of such section, or is extended pursuant to subsection (e)(2) of such section.".

Page 385, line 9, strike "approvals and filings" and insert "approval and prior notification".

Page 385, line 12, insert after the period the following: "The preceding sentence shall not otherwise modify, impair, or supercede the operation of any of the antitrust laws (as defined in subsection (a) of the first section of the Clayton Act, except that such term includes section 5 of the Federal Trade Commission Act to the extent that such section 5 relates to unfair methods of competition).".

Page 424, after line 21, insert the following new subsection:

1 (u) STUDY OF PAYMENT OF CONSUMER CLAIMS.—
2 Not later than 6 months following the dissolution of a cov-
3 ered financial company under section 1603(b), the Comp-
4 troller General of the United States shall carry out a
5 study, and report on such study to the Committee on
6 Banking, Housing, and Urban Affairs and the Committee
7 on the Judiciary of the Senate and the Committee on Fi-
8 nancial Services and the Committee on the Judiciary of
9 the House of Representatives, regarding the satisfaction
10 of claims arising from violations of the provisions of the

1 Truth in Lending Act, if any, in instances where any as-
2 sets were transferred from such covered financial com-
3 pany.

Page 432, line 7, strike "Section" and insert the following:

4 (1) Section

Page 432, after line 12, insert the following new paragraphs:

5 (2) Section 303 of title 11, United States Code,
6 is amended—
7 (A) in subsection (h)—
8 (i) by striking "or" at the end of
9 paragraph (1);
10 (ii) by striking the period at the end
11 of paragraph (2) and inserting "; or"; and
12 (iii) by adding at the end the fol-
13 lowing new paragraph:
14 "(3) an involuntary case is filed against a cov-
15 ered financial company, as defined in section
16 1602(5) of the Dissolution Authority for Large,
17 Interconnected Financial Companies Act of 2009, by
18 the Federal Deposit Insurance Corporation under
19 section 1607 of that Act."; and

1 (B) by adding at the end the following new
2 subsection:
3 "(m) Notwithstanding subsections (a) and (b) of this
4 section and section 109(b)(2), an involuntary case may be
5 commenced by the Federal Deposit Insurance Corporation
6 against a covered financial company (as defined in section
7 1602(5) of the Dissolution Authority for Large, Inter-
8 connected Financial Companies Act of 2009). Such invol-
9 untary case may be commenced by the Federal Deposit
10 Insurance Corporation in accordance with section 1607 of
11 that Act.".
12 (3) Title 11, United States Code, is amended by
13 inserting after section 303 the following new section:
14 **"SEC. 304. CASES INVOLVING FDIC DISSOLUTION AUTHOR-**
15 **ITY.**
16 "(a) APPOINTMENT.—In any case commenced by the
17 Federal Deposit Insurance Corporation under section
18 303(m), on the request of the Federal Deposit Insurance
19 Corporation, such Corporation shall be appointed to serve
20 as trustee in such case, notwithstanding any other provi-
21 sion of this title.
22 "(b) QUALIFICATION.—Sections 321, 322, 324, and
23 326 shall not apply with respect to the appointment or
24 service of such Corporation as trustee in any case so com-
25 menced.".

Page 436, after line 11, insert the following new section:

1 **SEC. 1615. STUDY ON THE EFFECT OF SAFE HARBOR PROVI-**
2 **SIONS IN INSOLVENCY CASES.**

3 (a) STUDY.—The Comptroller General of the United
4 States shall conduct a study of the safe harbor provisions
5 under Federal law for derivatives, swaps, and securities
6 transactions addressing—

7 (1) how the safe harbor provisions have been
8 applied in insolvency cases;

9 (2) how such provisions impact the rights of
10 parties in interest in insolvency cases;

11 (3) whether these provisions impede or interfere
12 with allowing a debtor a reasonable period of time
13 to pursue rehabilitation and reorganization; and

14 (4) whether these provisions had an adverse im-
15 pact on the financial marketplace.

16 (b) REPORT TO THE CONGRESS.—Not later than 180
17 days after the date of the enactment of this title, the
18 Comptroller General shall submit to the President pro
19 tempore of the Senate and the Speaker of the House of
20 Representatives a report on the results of the study con-
21 ducted under subsection (a), together with any rec-
22 ommendations for legislation to address any adverse im-
23 pacts presented by the Federal safe harbor provisions.

Page 643, strike line 23, and all that follows through page 644, line 7.

Page 768, beginning on line 4, strike ", TAX PREPARERS, AND ATTORNEYS" and insert "AND TAX PREPARERS".

Page 769, line 5, insert "or" after the semicolon.

Page 769, beginning on line 8, strike "; or" and insert a period.

Page 769, strike line 10 and all that follows through page 770, line 4 (and redesignate succeeding paragraphs accordingly).

Page 770, line 15, strike "or (1)(C)".

Page 770, line 20, strike ", (1)(B) or (1)(C)" and insert "or (1)(B)".

Page 776, after line 19, insert the following new subsection:

1 (l) EXCLUSION FOR PRACTICE OF LAW.—

2 (1) IN GENERAL.—Except as provided under
3 paragraph (2), nothing in this title shall apply with
4 respect to an activity engaged in by an attorney, or
5 engaged in under the direction of an attorney, as

1 part of the practice of law under the laws of a State
2 in which the attorney is licensed to practice law.
3 (2) RULE OF CONSTRUCTION.—
4 (A) IN GENERAL.—Paragraph (1) shall not
5 be construed to limit the exercise by the Direc-
6 tor and the Agency of any rulemaking, super-
7 visory, enforcement, or other authority, includ-
8 ing authority to order assessments, regarding
9 any activity that is a financial activity described
10 in any subparagraph of section 4002(19) and is
11 not engaged in as—
12 (i) part of the practice of law; or
13 (ii) incidental to the practice of law,
14 to the extent that such activity is provided
15 exclusively within the scope of the attor-
16 ney-client relationship and is not otherwise
17 provided by or under the direction of the
18 attorney to any consumer who is not re-
19 ceiving legal advice or services from the at-
20 torney in connection with such activity.
21 (B) CONSTRUCTION.—Paragraph (1) shall
22 not be construed to limit the authority of the
23 Director and the Agency with respect to any ac-
24 tivity to the extent that such activity is other-
25 wise subject to any of the enumerated consumer

1 laws or the authorities transferred under sub-
2 titles F or H.
3 (3) EXCEPTION.—Notwithstanding paragraph
4 (1), an individual who provides legal advice or serv-
5 ices related to preventing a foreclosure shall be sub-
6 ject to this title unless such individual provides fore-
7 closure prevention services in connection with—
8 (A) the preparation and filing of a bank-
9 ruptcy petition; or
10 (B) court proceedings to avoid a fore-
11 closure.

Page 844, strike lines 18 through 20 and redesignate succeeding paragraphs accordingly.

Page 846, beginning on line 25, strike "the district court of the United States for any district in which such person is found, resides, or transacts business" and insert "an appropriate United States district court may".

Page 847, line 5, strike "shall have jurisdiction to".

Page 847, strike lines 9 through 11.

Page 851, strike lines 1 through 10.

Page 854, beginning on line 7, strike "Any Agency investigator" and insert "The examination of any person pursuant to a demand for oral testimony served under

this subsection shall be taken before an officer authorized to administer oaths and affirmations by the laws of the United States or of the place where the examination is held. The officer".

Page 854, beginning on line 12, strike "investigator" and insert "officer".

Page 854, beginning on line 19, strike "Agency investigator" and insert "officer".

Page 858, line 12, after "it," insert "the officer or".

Page 858, line 19, strike "Agency investigator" and insert "officer".

Page 858, line 23, insert "the officer or" before "the Agency".

Page 880, line 11, strike "may" and insert "shall".

Page 1118, beginning on line 20, strike "and shall be subject" and all that follows through line 21 and insert a period.

Page 1144, strike line 16 and all that follows through the item after line 18, page 1145, and insert the following:

1 **SEC. 7214. EXPANDED ACCESS TO GRAND JURY INFORMA-**
2 **TION.**

3 Subsection (b) of section 3322 of title 18, United
4 States Code, is amended—

5 (1) in paragraph (1), by striking "matters oc-
6 curring before a grand jury" and inserting "grand
7 jury information obtained";

8 (2) by redesignating paragraph (2) as para-
9 graph (3);

10 (3) in paragraph (3) (as so redesignated), by
11 inserting "or (2)" after "(1)"; and

12 (4) by inserting after paragraph (1), the fol-
13 lowing new paragraph:

14 "(2) Upon motion of an attorney for the gov-
15 ernment, a court may direct disclosure of grand jury
16 information obtained during an investigation of a se-
17 curities law violation to identified personnel of the
18 Securities and Exchange Commission—

19 "(A) for use in relation to any matter
20 within the jurisdiction of the Commission; or

21 "(B) to assist an attorney for the govern-
22 ment to whom matters have been disclosed
23 under subsection (a).".

AMENDMENT TO H.R. 4173

OFFERED BY M__. _____

At the end of the bill, insert the following new title:

TITLE VII—MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

SEC. 9000. SHORT TITLE; DESIGNATION AS ENUMERATED CONSUMER LAW.

(a) SHORT TITLE.—This title may be cited as the "Mortgage Reform and Anti-Predatory Lending Act".

(b) DESIGNATION AS ENUMERATED CONSUMER LAW UNDER THE PURVIEW OF THE CONSUMER FINANCIAL PROTECTION AGENCY.—Subtitles A, B, C, and E and sections 9501, 9502, and 9506, and the amendments made by such subtitles and sections, shall be enumerated consumer laws, as defined in section 4002(16), and come under the purview of the Consumer Financial Protection Agency for purposes of title IV, including the transfer of functions and personnel under subtitle F of title IV and the savings provisions of such subtitle.

Subtitle A—Residential Mortgage Loan Origination Standards

SEC. 9001. 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. All rule writing by the 'Federal banking agencies' as designated by the Mortgage Reform and Anti-Predatory Lending Act will be coordinated through the Financial Institutions Examination Council in consultation with the Chairman of the State Liaison Committee.

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

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

"(i) takes a residential mortgage loan application;

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

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

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

"(C) does not include any person who is (i) not otherwise described in subparagraph (A) or (B) and who performs purely administrative or clerical tasks on behalf of a person who is described in any such subparagraph, or (ii) an employee of a retailer of manufactured homes

1 who is not described in clause (i) or (iii) of sub-
2 paragraph (A) and who does not advise a con-
3 sumer on loan terms (including rates, fees, and
4 other costs);
5 "(D) does not include a person or entity
6 that only performs real estate brokerage activi-
7 ties and is licensed or registered in accordance
8 with applicable State law, unless such person or
9 entity is compensated for performing such bro-
10 kerage activities by a lender, a mortgage
11 broker, or other mortgage originator or by any
12 agent of such lender, mortgage broker, or other
13 mortgage originator;
14 "(E) does not include, with respect to a
15 residential mortgage loan, a person, estate, or
16 trust that provides mortgage financing for the
17 sale of 1 property in any 36-month period, pro-
18 vided that such loan—
19 "(i) is fully amortizing;
20 "(ii) is with respect to a sale for
21 which the seller determines in good faith
22 and documents that the buyer has a rea-
23 sonable ability to repay the loan;
24 "(iii) has a fixed rate or an adjustable
25 rate that is adjustable after 5 or more

1 years, subject to reasonable annual and
2 lifetime limitations on interest rate in-
3 creases; and
4 "(iv) meets any other criteria the
5 Federal banking agencies may prescribe;
6 and
7 "(F) does not include a servicer or servicer
8 employees, agents and contractors, including
9 but not limited to those who offer or negotiate
10 terms of a residential mortgage loan for pur-
11 poses of renegotiating, modifying, replacing and
12 subordinating principal of existing mortgages
13 where borrowers are behind in their payments,
14 in default or have a reasonable likelihood of
15 being in default or falling behind.
16 "(4) NATIONWIDE MORTGAGE LICENSING SYS-
17 TEM AND REGISTRY.—The term 'Nationwide Mort-
18 gage Licensing System and Registry' has the same
19 meaning as in the Secure and Fair Enforcement for
20 Mortgage Licensing Act of 2008.
21 "(5) OTHER DEFINITIONS RELATING TO MORT-
22 GAGE ORIGINATOR.—For purposes of this sub-
23 section, a person 'assists a consumer in obtaining or
24 applying to obtain a residential mortgage loan' by,
25 among other things, advising on residential mort-

1 gage loan terms (including rates, fees, and other
2 costs), preparing residential mortgage loan packages,
3 or collecting information on behalf of the consumer
4 with regard to a residential mortgage loan.

5 "(6) RESIDENTIAL MORTGAGE LOAN.—The
6 term 'residential mortgage loan' means any con-
7 sumer credit transaction that is secured by a mort-
8 gage, deed of trust, or other equivalent consensual
9 security interest on a dwelling or on residential real
10 property that includes a dwelling, other than a con-
11 sumer credit transaction under an open end credit
12 plan or, for purposes of sections 129B and 129C
13 and section 128(a) (16), (17), and (18), and 128(f)
14 and any regulations promulgated thereunder, an ex-
15 tension of credit relating to a plan described in sec-
16 tion 101(53D) of title 11, United States Code.

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

21 "(8) SECURITIZATION VEHICLE.—The term
22 'securitization vehicle' means a trust, corporation,
23 partnership, limited liability entity, special purpose
24 entity, or other structure that—

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

"(B) holds such loans.

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

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

SEC. 9002. RESIDENTIAL MORTGAGE LOAN ORIGINATION.

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

"§ 129B. Residential mortgage loan origination

"(a) FINDING AND PURPOSE.—

"(1) FINDING.—The Congress finds that economic stabilization would be enhanced by the protec-

1 tion, limitation, and regulation of the terms of resi-
2 dential mortgage credit and the practices related to
3 such credit, while ensuring that responsible, afford-
4 able mortgage credit remains available to consumers.
5 "(2) PURPOSE.—It is the purpose of this sec-
6 tion and section 129C to assure that consumers are
7 offered and receive residential mortgage loans on
8 terms that reasonably reflect their ability to repay
9 the loans and that are understandable and not un-
10 fair, deceptive or abusive.
11 "(b) DUTY OF CARE.—
12 "(1) STANDARD.—Subject to regulations pre-
13 scribed under this subsection, each mortgage origi-
14 nator shall, in addition to the duties imposed by oth-
15 erwise applicable provisions of State or Federal
16 law—
17 "(A) be qualified and, when required, reg-
18 istered and licensed as a mortgage originator in
19 accordance with applicable State or Federal
20 law, including the Secure and Fair Enforcement
21 for Mortgage Licensing Act of 2008;
22 "(B) with respect to each consumer seek-
23 ing or inquiring about a residential mortgage
24 loan, diligently work to present the consumer
25 with a range of residential mortgage loan prod-

1 ucts for which the consumer likely qualifies and
2 which are appropriate to the consumer's exist-
3 ing circumstances, based on information known
4 by, or obtained in good faith by, the originator;
5 "(C) make full, complete, and timely dis-
6 closure to each such consumer in writing, the
7 receipt and understanding of which shall be ac-
8 knowledged by the signature of the mortgage
9 originator and the consumer, of—
10 "(i) the comparative costs and bene-
11 fits of each residential mortgage loan prod-
12 uct offered, discussed, or referred to by the
13 originator (and such comparative costs and
14 benefits for each such product shall be pre-
15 sented side by side and the disclosures for
16 each such product shall have equal promi-
17 nence);
18 "(ii) the nature of the originator's re-
19 lationship to the consumer (including the
20 cost of the services to be provided by the
21 originator and a statement that the mort-
22 gage originator is or is not acting as an
23 agent for the consumer, as the case may
24 be); and

1 "(iii) any relevant conflicts of interest
2 between the originator and the consumer;
3 "(D) certify to the creditor, with respect to
4 any transaction involving a residential mortgage
5 loan, that the mortgage originator has fulfilled
6 all requirements applicable to the originator
7 under this section with respect to the trans-
8 action; and
9 "(E) include on all loan documents any
10 unique identifier of the mortgage originator
11 provided by the Nationwide Mortgage Licensing
12 System and Registry.
13 "(2) CLARIFICATION OF EXTENT OF DUTY TO
14 PRESENT RANGE OF PRODUCTS AND APPROPRIATE
15 PRODUCTS.—
16 "(A) NO DUTY TO OFFER PRODUCTS FOR
17 WHICH ORIGINATOR IS NOT AUTHORIZED TO
18 TAKE AN APPLICATION.—Paragraph (1)(B)
19 shall not be construed as requiring—
20 "(i) a mortgage originator to present
21 to any consumer any specific residential
22 mortgage loan product that is offered by a
23 creditor which does not accept consumer
24 referrals from, or consumer applications

1 submitted by or through, such originator;
2 or
3 "(ii) a creditor to offer products that
4 the creditor does not offer to the general
5 public.
6 "(B) APPROPRIATE LOAN PRODUCT.—For
7 purposes of paragraph (1)(B), a residential
8 mortgage loan shall be presumed to be appro-
9 priate for a consumer if—
10 "(i) the mortgage originator deter-
11 mines in good faith, based on then existing
12 information and without undergoing a full
13 underwriting process, that the consumer
14 has a reasonable ability to repay and, in
15 the case of a refinancing of an existing res-
16 idential mortgage loan, receives a net tan-
17 gible benefit, as determined in accordance
18 with regulations prescribed under sub-
19 sections (a) and (b) of section 129C; and
20 "(ii) the loan does not have predatory
21 characteristics or effects (such as equity
22 stripping and excessive fees and abusive
23 terms) as determined in accordance with
24 regulations prescribed under paragraph
25 (4).

1 "(3) RULES OF CONSTRUCTION.—No provision
2 of this subsection shall be construed as—
3 "(A) creating an agency or fiduciary rela-
4 tionship between a mortgage originator and a
5 consumer if the originator does not hold himself
6 or herself out as such an agent or fiduciary; or
7 "(B) restricting a mortgage originator
8 from holding himself or herself out as an agent
9 or fiduciary of a consumer subject to any addi-
10 tional duty, requirement, or limitation applica-
11 ble to agents or fiduciaries under any Federal
12 or State law.
13 "(4) REGULATIONS.—
14 "(A) IN GENERAL.—The Federal banking
15 agencies, in consultation with the Secretary,
16 and the Commission, shall jointly prescribe reg-
17 ulations to—
18 "(i) further define the duty estab-
19 lished under paragraph (1);
20 "(ii) implement the requirements of
21 this subsection;
22 "(iii) establish the time period within
23 which any disclosure required under para-
24 graph (1) shall be made to the consumer;
25 and

1 "(iv) establish such other require-
2 ments for any mortgage originator as such
3 regulatory agencies may determine to be
4 appropriate to meet the purposes of this
5 subsection.
6 "(B) COMPLEMENTARY AND NONDUPLICA-
7 TIVE DISCLOSURES.—The agencies referred to
8 in subparagraph (A) shall endeavor to make the
9 required disclosures to consumers under this
10 subsection complementary and nonduplicative
11 with other disclosures for mortgage consumers
12 to the extent such efforts—
13 "(i) are practicable; and
14 "(ii) do not reduce the value of any
15 such disclosure to recipients of such disclo-
16 sures.
17 "(5) COMPLIANCE PROCEDURES REQUIRED.—
18 The Federal banking agencies shall prescribe regula-
19 tions requiring depository institutions to establish
20 and maintain procedures reasonably designed to as-
21 sure and monitor the compliance of such depository
22 institutions, the subsidiaries of such institutions,
23 and the employees of such institutions or subsidi-
24 aries with the requirements of this section and the
25 registration procedures established under section

1507 of the Secure and Fair Enforcement for Mortgage Licensing Act of 2008.".

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

"129A. Fiduciary duty of servicers of pooled residential mortgages.
"129B. Residential mortgage loan origination.".

SEC. 9003. PROHIBITION ON STEERING INCENTIVES.

Section 129B of the Truth in Lending Act (as added by section 102(a)) is amended by inserting after subsection (b) the following new subsection:

"(c) PROHIBITION ON STEERING INCENTIVES.—

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

"(2) RESTRUCTURING OF FINANCING ORIGINATION FEE.—

"(A) IN GENERAL.—For any mortgage loan, a mortgage originator may not arrange for a consumer to finance through rate any origination fee or cost except bona fide third party settlement charges not retained by the creditor or mortgage originator.

1 "(B) EXCEPTION.—Notwithstanding para-
2 graph subparagraph (A), a mortgage originator
3 may arrange for a consumer to finance through
4 rate an origination fee or cost if—
5 "(i) the mortgage originator does not
6 receive any other compensation from the
7 consumer except the compensation that is
8 financed through rate; and
9 "(ii) the mortgage is a qualified mort-
10 gage.
11 "(3) REGULATIONS.—The Federal banking
12 agencies, in consultation with the Secretary and the
13 Commission, shall jointly prescribe regulations to
14 prohibit—
15 "(A) mortgage originators from steering
16 any consumer to a residential mortgage loan
17 that—
18 "(i) the consumer lacks a reasonable
19 ability to repay (in accordance with regula-
20 tions prescribed under section 129C(a));
21 "(ii) in the case of a refinancing of a
22 residential mortgage loan, does not provide
23 the consumer with a net tangible benefit
24 (in accordance with regulations prescribed
25 under section 129C(b)); or

1 "(iii) has predatory characteristics or
2 effects (such as equity stripping, excessive
3 fees, or abusive terms);
4 "(B) mortgage originators from steering
5 any consumer from a residential mortgage loan
6 for which the consumer is qualified that is a
7 qualified mortgage (as defined in section
8 129C(c)(3)) to a residential mortgage loan that
9 is not a qualified mortgage;
10 "(C) abusive or unfair lending practices
11 that promote disparities among consumers of
12 equal credit worthiness but of different race,
13 ethnicity, gender, or age;
14 "(D) mortgage originators from assessing
15 excessive points and fees (as such term is de-
16 scribed under section 103(aa)(4) of the Truth
17 in Lending Act (15 U.S.C. 1602(aa)(4))) to a
18 consumer for the origination of a residential
19 mortgage loan based on such consumer's deci-
20 sion to finance all or part of the payment
21 through the rate for such points and fees; and
22 "(E) mortgage originators from—
23 "(i) mischaracterizing the credit his-
24 tory of a consumer or the residential mort-
25 gage loans available to a consumer;

1 "(ii) mischaracterizing or suborning
2 the mischaracterization of the appraised
3 value of the property securing the exten-
4 sion of credit; or
5 "(iii) if unable to suggest, offer, or
6 recommend to a consumer a loan that is
7 not more expensive than a loan for which
8 the consumer qualifies, discouraging a con-
9 sumer from seeking a home mortgage loan
10 secured by a consumer's principal dwelling
11 from another mortgage originator.
12 "(4) RULES OF CONSTRUCTION.—No provision
13 of this subsection shall be construed as—
14 "(A) permitting yield spread premiums or
15 other similar incentive compensation;
16 "(B) affecting the mechanism for pro-
17 viding the total amount of direct and indirect
18 compensation permitted to a mortgage origi-
19 nator;
20 "(C) limiting or affecting the amount of
21 compensation received by a creditor upon the
22 sale of a consummated loan to a subsequent
23 purchaser;
24 "(D) restricting a consumer's ability to fi-
25 nance, including through principal, any origina-

1 tion fees or costs permitted under this sub-
2 section, or the mortgage originator's ability to
3 receive such fees or costs (including compensa-
4 tion) from any person, so long as such fees or
5 costs were fully and clearly disclosed to the con-
6 sumer earlier in the application process as re-
7 quired by 129B(b)(1)(C)(i) and do not vary
8 based on the terms of the loan (other than the
9 amount of the principal) or the consumer's de-
10 cision about whether to finance such fees or
11 costs; or
12 "(E) prohibiting incentive payments to a
13 mortgage originator based on the number of
14 residential mortgage loans originated within a
15 specified period of time.".

16 **SEC. 9004. LIABILITY.**

17 Section 129B of the Truth in Lending Act is amend-
18 ed by inserting after subsection (c) (as added by section
19 103) the following new subsection:
20 "(d) LIABILITY FOR VIOLATIONS.—
21 "(1) IN GENERAL.—For purposes of providing
22 a cause of action for any failure by a mortgage origi-
23 nator to comply with any requirement imposed
24 under this section and any regulation prescribed
25 under this section, subsections (a) and (b) of section

1 130 shall be applied with respect to any such failure
2 by substituting 'mortgage originator' for 'creditor'
3 each place such term appears in each such sub-
4 section.

5 "(2) MAXIMUM.—The maximum amount of any
6 liability of a mortgage originator under paragraph
7 (1) to a consumer for any violation of this section
8 shall not exceed the greater of actual damages or an
9 amount equal to 3 times the total amount of direct
10 and indirect compensation or gain accruing to the
11 mortgage originator in connection with the residen-
12 tial mortgage loan involved in the violation, plus the
13 costs to the consumer of the action, including a rea-
14 sonable attorney's fee.".

15 **SEC. 9005. REGULATIONS.**

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

20 "(e) DISCRETIONARY REGULATORY AUTHORITY.—

21 "(1) IN GENERAL.—The Federal banking agen-
22 cies shall, by regulations issued jointly, prohibit or
23 condition terms, acts or practices relating to residen-
24 tial mortgage loans that the agencies find to be abu-
25 sive, unfair, deceptive, predatory, inconsistent with

1 reasonable underwriting standards, necessary or
2 proper to ensure that responsible, affordable mort-
3 gage credit remains available to consumers in a
4 manner consistent with the purposes of this section
5 and section 129B, necessary or proper to effectuate
6 the purposes of this section and section 129C, to
7 prevent circumvention or evasion thereof, or to facili-
8 tate compliance with such sections, or are not in the
9 interest of the borrower.

10 "(2) APPLICATION.—The regulations prescribed
11 under paragraph (1) shall be applicable to all resi-
12 dential mortgage loans and shall be applied in the
13 same manner as regulations prescribed under section
14 105.

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

19 (b) EFFECTIVE DATE.—The regulations required or
20 authorized to be prescribed under this subtitle or the
21 amendments made by this subtitle—

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

1 (2) shall take effect not later than 18 months
2 after the date of the enactment of this Act.
3 (c) TECHNICAL AND CONFORMING AMENDMENTS.—
4 Section 129(l)(2) of the Truth in Lending Act (15 U.S.C.
5 1639(l)(2)) is amended by inserting "referred to in section
6 103(aa)" after "loans" each place such term appears.

7 **SEC. 9006. STUDY OF SHARED APPRECIATION MORTGAGES.**

8 (a) STUDY.—The Secretary of Housing and Urban
9 Development, in consultation with the Secretary of the
10 Treasury and other relevant agencies, shall conduct a com-
11 prehensive study to determine prudent statutory and regu-
12 latory requirements sufficient to provide for the wide-
13 spread use of shared appreciation mortgages to strengthen
14 local housing markets, provide new opportunities for af-
15 fordable homeownership, and enable homeowners at-risk
16 of foreclosure to refinance or modify their mortgages.
17 (b) REPORT.—Not later than the expiration of the
18 6-month period beginning on the date of the enactment
19 of this Act, the Secretary of Housing and Urban Develop-
20 ment shall submit a report to the Congress on the results
21 of the study, which shall include recommendations for the
22 regulatory and legislative requirements referred to in sub-
23 section (a).

Subtitle B—Minimum Standards For Mortgages

SEC. 9101. ABILITY TO REPAY.

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

"§ 129C. Minimum standards for residential mortgage loans

"(a) ABILITY TO REPAY.—

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

"(2) MULTIPLE LOANS.—If the creditor knows, or has reason to know, that 1 or more residential mortgage loans secured by the same dwelling will be made to the same consumer, the creditor shall make a reasonable and good faith determination, based on

1 verified and documented information, that the con-
2 sumer has a reasonable ability to repay the com-
3 bined payments of all loans on the same dwelling ac-
4 cording to the terms of those loans and all applicable
5 taxes, insurance, and assessments.

6 "(3) BASIS FOR DETERMINATION.—A deter-
7 mination under this subsection of a consumer's abil-
8 ity to repay a residential mortgage loan shall include
9 consideration of the consumer's credit history, cur-
10 rent income, expected income the consumer is rea-
11 sonably assured of receiving, current obligations,
12 debt-to-income ratio, employment status, and other
13 financial resources other than the consumer's equity
14 in the dwelling or real property that secures repay-
15 ment of the loan.

16 "(4) INCOME VERIFICATION.—In order to safe-
17 guard against fraudulent reporting, any consider-
18 ation of a consumer's income history in making a
19 determination under this subsection shall include the
20 verification of such income by the use of—

21 "(A) Internal Revenue Service transcripts
22 of tax returns provided by a third party; or

23 "(B) such other similar method that quick-
24 ly and effectively verifies income documentation

1 by a third party as the Federal banking agen-
2 cies may jointly prescribe.
3 "(5) NONSTANDARD LOANS.—
4 "(A) VARIABLE RATE LOANS THAT DEFER
5 REPAYMENT OF ANY PRINCIPAL OR INTER-
6 EST.—For purposes of determining, under this
7 subsection, a consumer's ability to repay a vari-
8 able rate residential mortgage loan that allows
9 or requires the consumer to defer the repay-
10 ment of any principal or interest, the creditor
11 shall use a fully amortizing repayment schedule.
12 "(B) INTEREST-ONLY LOANS.—For pur-
13 poses of determining, under this subsection, a
14 consumer's ability to repay a residential mort-
15 gage loan that permits or requires the payment
16 of interest only, the creditor shall use the pay-
17 ment amount required to amortize the loan by
18 its final maturity.
19 "(C) CALCULATION FOR NEGATIVE AMOR-
20 TIZATION.—In making any determination under
21 this subsection, a creditor shall also take into
22 consideration any balance increase that may ac-
23 crue from any negative amortization provision.
24 "(D) CALCULATION PROCESS.—For pur-
25 poses of making any determination under this

1 subsection, a creditor shall calculate the month-
2 ly payment amount for principal and interest on
3 any residential mortgage loan by assuming—
4 "(i) the loan proceeds are fully dis-
5 bursed on the date of the consummation of
6 the loan;
7 "(ii) the loan is to be repaid in sub-
8 stantially equal monthly amortizing pay-
9 ments for principal and interest over the
10 entire term of the loan with no balloon
11 payment, unless the loan contract requires
12 more rapid repayment (including balloon
13 payment), in which case the calculation
14 shall be made (I) in accordance with regu-
15 lations prescribed by the Federal banking
16 agencies, with respect to any loan which
17 has an annual percentage rate that does
18 not exceed the average prime offer rate for
19 a comparable transaction, as of the date
20 the interest rate is set, by 1.5 or more per-
21 centage points for a first lien residential
22 mortgage loan; and by 3.5 or more per-
23 centage points for a subordinate lien resi-
24 dential mortgage loan; or (II) using the
25 contract's repayment schedule, with re-

1 spect to a loan which has an annual per-
2 centage rate, as of the date the interest
3 rate is set, that is at least 1.5 percentage
4 points above the average prime offer rate
5 for a first lien residential mortgage loan;
6 and 3.5 percentage points above the aver-
7 age prime offer rate for a subordinate lien
8 residential mortgage loan; and
9 "(iii) the interest rate over the entire
10 term of the loan is a fixed rate equal to the
11 fully indexed rate at the time of the loan
12 closing, without considering the introduc-
13 tory rate.
14 "(E) REFINANCE OF HYBRID LOANS WITH
15 CURRENT LENDER.—In considering any appli-
16 cation for refinancing an existing hybrid loan
17 by the creditor into a standard loan to be made
18 by the same creditor in any case in which the
19 sole net-tangible benefit to the mortgagor would
20 be a reduction in monthly payment and the
21 mortgagor has not been delinquent on any pay-
22 ment on the existing hybrid loan, the creditor
23 may—
24 "(i) consider the mortgagor's good
25 standing on the existing mortgage;

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

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

"(6) 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.

"(7) REVERSE MORTGAGES.—This subsection shall not apply with respect to any reverse mortgage".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129B (as added by section 102(b)) the following new item:

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

1 **SEC. 9102. NET TANGIBLE BENEFIT FOR REFINANCING OF**
2 **RESIDENTIAL MORTGAGE LOANS.**

3 Section 129C of the Truth in Lending Act (as added
4 by section 9101(a)) is amended by inserting after sub-
5 section (a) the following new subsection:

6 "(b) NET TANGIBLE BENEFIT FOR REFINANCING OF
7 RESIDENTIAL MORTGAGE LOANS.—

8 "(1) IN GENERAL.—In accordance with regula-
9 tions prescribed under paragraph (3), no creditor
10 may extend credit in connection with any residential
11 mortgage loan that involves a refinancing of a prior
12 existing residential mortgage loan unless the creditor
13 reasonably and in good faith determines, at the time
14 the loan is consummated and on the basis of infor-
15 mation known by or obtained in good faith by the
16 creditor, that the refinanced loan will provide a net
17 tangible benefit to the consumer.

18 "(2) CERTAIN LOANS PROVIDING NO NET TAN-
19 GIBLE BENEFIT.—A residential mortgage loan that
20 involves a refinancing of a prior existing residential
21 mortgage loan shall not be considered to provide a
22 net tangible benefit to the consumer if the costs of
23 the refinanced loan, including points, fees and other
24 charges, exceed the amount of any newly advanced
25 principal without any corresponding changes in the

1 terms of the refinanced loan that are advantageous
2 to the consumer.
3 "(3) NET TANGIBLE BENEFIT.—The Federal
4 banking agencies shall jointly prescribe regulations
5 defining the term 'net tangible benefit' for purposes
6 of this subsection.".

7 **SEC. 9103. SAFE HARBOR AND REBUTTABLE PRESUMPTION.**

8 Section 129C of the Truth in Lending Act is amend-
9 ed by inserting after subsection (b) (as added by section
10 9102) the following new subsection:
11 "(c) PRESUMPTION OF ABILITY TO REPAY AND NET
12 TANGIBLE BENEFIT.—
13 "(1) IN GENERAL.—Any creditor with respect
14 to any residential mortgage loan, and any assignee
15 or securitizer of such loan, may presume that the
16 loan has met the requirements of subsections (a)
17 and (b), if the loan is a qualified mortgage.
18 "(2) DEFINITIONS.—For purposes of this sub-
19 section, the following definitions shall apply:
20 "(A) QUALIFIED MORTGAGE.—The term
21 'qualified mortgage' means any residential
22 mortgage loan—
23 "(i) that does not allow a consumer to
24 defer repayment of principal or interest, or
25 is not otherwise deemed a 'non-traditional

1 mortgage' under guidance, advisories, or
2 regulations prescribed by the Federal
3 Banking Agencies;
4 "(ii) that does not provide for a re-
5 payment schedule that results in negative
6 amortization at any time;
7 "(iii) for which the terms are fully
8 amortizing and which does not result in a
9 balloon payment, where a 'balloon pay-
10 ment' is a scheduled payment that is more
11 than twice as large as the average of ear-
12 lier scheduled payments;
13 "(iv) which has an annual percentage
14 rate that does not exceed the average
15 prime offer rate for a comparable trans-
16 action, as of the date the interest rate is
17 set—
18 "(I) by 1.5 or more percentage
19 points, in the case of a first lien resi-
20 dential mortgage loan having a origi-
21 nal principal obligation amount that is
22 equal to or less than the amount of
23 the maximum limitation on the origi-
24 nal principal obligation of mortgage in
25 effect for a residence of the applicable

1 size, as of the date of such interest
2 rate set, pursuant to the sixth sen-
3 tence of section 305(a)(2) the Federal
4 Home Loan Mortgage Corporation
5 Act (12 U.S.C. 1454(a)(2));
6 "(II) by 2.5 or more percentage
7 points, in the case of a first lien resi-
8 dential mortgage loan having a origi-
9 nal principal obligation amount that is
10 more than the amount of the max-
11 imum limitation on the original prin-
12 cipal obligation of mortgage in effect
13 for a residence of the applicable size,
14 as of the date of such interest rate
15 set, pursuant to the sixth sentence of
16 section 305(a)(2) the Federal Home
17 Loan Mortgage Corporation Act (12
18 U.S.C. 1454(a)(2)); and
19 "(III) by 3.5 or more percentage
20 points, in the case of a subordinate
21 lien residential mortgage loan;
22 "(v) for which the income and finan-
23 cial resources relied upon to qualify the ob-
24 ligors on the loan are verified and docu-
25 mented;

1 "(vi) in the case of a fixed rate loan,
2 for which the underwriting process is based
3 on a payment schedule that fully amortizes
4 the loan over the loan term and takes into
5 account all applicable taxes, insurance, and
6 assessments;
7 "(vii) in the case of an adjustable rate
8 loan, for which the underwriting is based
9 on the maximum rate permitted under the
10 loan during the first seven years, and a
11 payment schedule that fully amortizes the
12 loan over the loan term and takes into ac-
13 count all applicable taxes, insurance, and
14 assessments;
15 "(viii) that does not cause the con-
16 sumer's total monthly debts, including
17 amounts under the loan, to exceed a per-
18 centage established by regulation of the
19 consumer's monthly gross income or such
20 other maximum percentage of such income
21 as may be prescribed by regulation under
22 paragraph (4), and such rules shall also
23 take into consideration the consumer's in-
24 come available to pay regular expenses

1 after payment of all installment and revolv-
2 ing debt;
3 "(ix) for which the total points and
4 fees payable in connection with the loan do
5 not exceed 2 percent of the total loan
6 amount, where 'points and fees' means
7 points and fees as defined by Section
8 103(aa)(4) of the Truth in Lending Act
9 (15 U.S.C. 1602(aa)(4)); and
10 "(x) for which the term of the loan
11 does not exceed 30 years, except as such
12 term may be extended under paragraph
13 (4).
14 "(B) AVERAGE PRIME OFFER RATE.—The
15 term 'average prime offer rate' means an an-
16 nual percentage rate that is derived from aver-
17 age interest rates, points, and other loan pric-
18 ing terms currently offered to consumers by a
19 representative sample of creditors for mortgage
20 transactions that have low risk pricing charac-
21 teristics.
22 "(C) REVERSE MORTGAGES.—For pur-
23 poses of this subsection, the term 'qualified
24 mortgage' includes any reverse mortgage that

1 complies with the condition established in sub-
2 paragraph (A)(iv).
3 "(3) PUBLICATION OF AVERAGE PRIME OFFER
4 RATE AND APR THRESHOLDS.—The Board—
5 "(A) shall publish, and update at least
6 weekly, average prime offer rates;
7 "(B) may publish multiple rates based on
8 varying types of mortgage transactions; and
9 "(C) shall adjust the thresholds of 1.50
10 percentage points in paragraph (2)(A)(iv)(I),
11 2.50 percentage points in paragraph
12 (2)(A)(iv)(II), and 3.50 percentage points in
13 paragraph (2)(A)(v)(III), as necessary to reflect
14 significant changes in market conditions and to
15 effectuate the purposes of the Mortgage Reform
16 and Anti-Predatory Lending Act.
17 "(4) REGULATIONS.—
18 "(A) IN GENERAL.—The Federal banking
19 agencies shall jointly prescribe regulations to
20 carry out the purposes of this subsection.
21 "(B) REVISION OF SAFE HARBOR CRI-
22 TERIA.—
23 "(i) IN GENERAL.—The Federal bank-
24 ing agencies may jointly prescribe regula-
25 tions that revise, add to, or subtract from

1 the criteria that define a qualified mort-
2 gage upon a finding that such regulations
3 are necessary or proper to ensure that re-
4 sponsible, affordable mortgage credit re-
5 mains available to consumers in a manner
6 consistent with the purposes of this sec-
7 tion, necessary and appropriate to effec-
8 tuate the purposes of this section and sec-
9 tion 129B, to prevent circumvention or
10 evasion thereof, or to facilitate compliance
11 with such sections.

12 "(ii) LOAN DEFINITION.—The fol-
13 lowing agencies shall, in consultation with
14 the Federal banking agencies, prescribe
15 rules defining the types of loans they in-
16 sure, guarantee or administer, as the case
17 may be, that are Qualified Mortgages for
18 purposes of subsection (c)(1)(A) upon a
19 finding that such rules are consistent with
20 the purposes of this section and section
21 129B, to prevent circumvention or evasion
22 thereof, or to facilitate compliance with
23 such sections—

24 "(I) The Department of Housing
25 and Urban Development, with regard

1 to mortgages insured under title II of
2 the National Housing Act (12 U.S.C.
3 1707 et seq.);
4 "(II) The Secretary of Veterans
5 Affairs, with regard to a loan made or
6 guaranteed by the Secretary of Vet-
7 erans Affairs;
8 "(III) The Secretary of Agri-
9 culture, with regard loans guaranteed
10 by the Secretary of Agriculture pursu-
11 ant to 42 U.S.C. 1472(h);
12 "(IV) The Federal Housing Fi-
13 nance Agency, with regard to loans
14 meeting the conforming loan stand-
15 ards of the Federal National Mort-
16 gage Corporation or the Federal
17 Home Loan Mortgage Corporation;
18 and
19 "(V) The Rural Housing Service,
20 with regard to loans insured by the
21 Rural Housing Service.".
22 **SEC. 9104. LIABILITY.**
23 Section 129C of the Truth in Lending Act is amend-
24 ed by inserting after subsection (c) (as added by section
25 9103) the following new subsection:

1 "(d) LIABILITY FOR VIOLATIONS.—

2 "(1) IN GENERAL.—

3 "(A) RESCISSION.—In addition to any
4 other liability under this title for a violation by
5 a creditor of subsection (a) or (b) (for example
6 under section 130) and subject to the statute of
7 limitations in paragraph (9), a civil action may
8 be maintained against a creditor for a violation
9 of subsection (a) or (b) with respect to a resi-
10 dential mortgage loan for the rescission of the
11 loan, and such additional costs as the obligor
12 may have incurred as a result of the violation
13 and in connection with obtaining a rescission of
14 the loan, including a reasonable attorney's fee.

15 "(B) CURE.—A creditor shall not be liable
16 for rescission under subparagraph (A) with re-
17 spect to a residential mortgage loan if, no later
18 than 90 days after the receipt of notification
19 from the consumer that the loan violates sub-
20 section (a) or (b), the creditor, acting in good
21 faith, a cure.

22 "(2) LIMITED ASSIGNEE AND SECURITIZER LI-
23 ABILITY.—Notwithstanding sections 125(e) and 131
24 and except as provided in paragraph (3), a civil ac-
25 tion which may be maintained against a creditor

1 with respect to a residential mortgage loan for a vio-
2 lation of subsection (a) or (b) may be maintained
3 against any assignee or securitizer of such residen-
4 tial mortgage loan, who has acted in good faith, for
5 the following liabilities only:
6 "(A) Rescission of the loan.
7 "(B) Such additional costs as the obligor
8 may have incurred as a result of the violation
9 and in connection with obtaining a rescission of
10 the loan, including a reasonable attorney's fee.
11 "(3) ASSIGNEE AND SECURITIZER EXEMP-
12 TION.—No assignee or securitizer of a residential
13 mortgage loan that has exercised reasonable due dili-
14 gence in complying with the requirements of sub-
15 sections (a) and (b), consistent with reasonable due
16 diligence practices prescribed by the Federal banking
17 agencies, shall be liable under paragraph (2) with re-
18 spect to such loan if, no later than 90 days after the
19 receipt of notification from the consumer that the
20 loan violates subsection (a) or (b), the assignee or
21 securitizer provides a cure so that the loan satisfies
22 the requirements of subsections (a) and (b).
23 "(4) ABSENT PARTIES.—
24 "(A) ABSENT CREDITOR.—Notwith-
25 standing the exemption provided in paragraph

1 (3), if the creditor with respect to a residential
2 mortgage loan made in violation of subsection
3 (a) or (b) has ceased to exist as a matter of law
4 or has filed for bankruptcy protection under
5 title 11, United States Code, or has had a re-
6 ceiver, conservator, or liquidating agent ap-
7 pointed, a consumer may maintain a civil action
8 against an assignee to cure the residential
9 mortgage loan, plus the costs and reasonable
10 attorney's fees incurred in obtaining such rem-
11 edy.

12 "(B) ABSENT CREDITOR AND ASSIGNEE.—
13 Notwithstanding the exemption provided in
14 paragraph (3), if the creditor with respect to a
15 residential mortgage loan made in violation of
16 subsection (a) or (b) and each assignee of such
17 loan have ceased to exist as a matter of law or
18 have filed for bankruptcy protection under title
19 11, United States Code, or have had receivers,
20 conservators, or liquidating agents appointed,
21 the consumer may maintain the civil action re-
22 ferred to in subparagraph (A) against the
23 securitizer.

24 "(5) CURE DEFINED.—For purposes of this
25 subsection, the term 'cure' means, with respect to a

1 residential mortgage loan that violates subsection (a)
2 or (b), the modification or refinancing, at no cost to
3 the consumer, of the loan to provide terms that sat-
4 isfy the requirements of subsections (a) and (b) and
5 the payment of such additional costs as the obligor
6 may have incurred in connection with obtaining a
7 cure of the loan, including a reasonable attorney's
8 fee.

9 "(6) DISAGREEMENT OVER CURE.—If any cred-
10 itor, assignee, or securitizer and a consumer fail to
11 reach agreement on a cure with respect to a residen-
12 tial mortgage loan that violates subsection (a) or (b),
13 or the consumer fails to accept a cure proffered by
14 a creditor, assignee, or securitizer—

15 "(A) the creditor, assignee, or securitizer
16 may provide the cure; and

17 "(B) the consumer may challenge the ade-
18 quacy of the cure during the 6-month period be-
19 ginning when the cure is provided.

20 If the consumer's challenge, under this paragraph,
21 of a cure is successful, the creditor, assignee, or
22 securitizer shall be liable to the consumer for rescis-
23 sion of the loan and such additional costs under
24 paragraph (2).

1 "(7) INABILITY TO PROVIDE OR OBTAIN RE-
2 SCISSION.—If a creditor, assignee, or securitizer
3 cannot provide, or a consumer cannot obtain, rescis-
4 sion under paragraph (1) or (2), the liability of such
5 creditor, assignee, or securitizer shall be met by pro-
6 viding the financial equivalent of a rescission, to-
7 gether with such additional costs as the obligor may
8 have incurred as a result of the violation and in con-
9 nection with obtaining a rescission of the loan, in-
10 cluding a reasonable attorney's fee.
11 "(8) NO CLASS ACTIONS AGAINST ASSIGNEE OR
12 SECURITIZER UNDER PARAGRAPH (2).—Only indi-
13 vidual actions may be brought against an assignee
14 or securitizer of a residential mortgage loan for a
15 violation of subsection (a) or (b).
16 "(9) STATUTE OF LIMITATIONS.—The liability
17 of a creditor, assignee, or securitizer under this sub-
18 section shall apply in any original action against a
19 creditor under paragraph (1) or an assignee or
20 securitizer under paragraph (2) which is brought be-
21 fore—
22 "(A) in the case of any residential mort-
23 gage loan other than a loan to which subpara-
24 graph (B) applies, the end of the 3-year period

1 beginning on the date the loan is consummated;
2 or
3 "(B) in the case of a residential mortgage
4 loan that provides for a fixed interest rate for
5 an introductory period and then resets or ad-
6 justs to a variable rate or that provides for a
7 nonamortizing payment schedule and then con-
8 verts to an amortizing payment schedule, the
9 earlier of—
10 "(i) the end of the 1-year period be-
11 ginning on the date of such reset, adjust-
12 ment, or conversion; or
13 "(ii) the end of the 6-year period be-
14 ginning on the date the loan is con-
15 summated.
16 "(10) TRUSTEES, POOLS, AND INVESTORS IN
17 POOLS EXCLUDED.—In the case of residential mort-
18 gage loans acquired or aggregated for the purpose of
19 including such loans in a pool of assets held for the
20 purpose of issuing or selling instruments rep-
21 resenting interests in such pools including through a
22 securitization vehicle, the terms 'assignee' and
23 'securitizer', as used in this section, do not include
24 the securitization vehicle, any trustee that holds
25 such loans solely for the benefit of the securitization

1 vehicle, the pools of such loans or any original or
2 subsequent purchaser of any interest in the
3 securitization vehicle or any instrument representing
4 a direct or indirect interest in such pool.
5 "(e) OBLIGATION OF SECURITIZERS, AND PRESERVA-
6 TION OF BORROWER REMEDIES.—
7 "(1) OBLIGATION TO RETAIN ACCESS.—Any
8 securitizer of a residential mortgage loan sold or to
9 be sold as part of a securitization vehicle shall, in
10 any document or contract providing for the transfer,
11 conveyance, or the establishment of such
12 securitization vehicle, reserve the right and preserve
13 the ability—
14 "(A) to identify and obtain access to any
15 such loan;
16 "(B) to acquire any such loan in the event
17 of a violation of subsection (a) or (b) of this
18 section; and
19 "(C) to provide to the consumer any and
20 all remedies provided for under this title for
21 any violation of this title.
22 "(2) ADDITIONAL DAMAGES.—Any creditor, as-
23 signee, or securitizer of a residential mortgage loan
24 that is subject to a remedy under subsection (d) and
25 has failed to comply with paragraph (1) shall be

1 subject to additional exemplary or punitive damages
2 not to exceed the original principal balance of such
3 loan.

4 "(3) CONTACT INFORMATION NOTICE.—The
5 servicer with respect to a residential mortgage loan
6 shall provide a written notice to a consumer identi-
7 fying the name and contact information of the cred-
8 itor or any assignee or securitizer who should be
9 contacted by the consumer for any reason con-
10 cerning the consumer's rights with respect to the
11 loan. Such notice shall be provided—

12 "(A) upon request of the consumer;

13 "(B) whenever there is a change in owner-
14 ship of a residential mortgage loan; or

15 "(C) on a regular basis, not less than an-
16 nually.

17 "(f) RULES TO ESTABLISH PROCESS.—The Board
18 shall promulgate rules to govern the rescission process es-
19 tablished for violations of subsections (a) and (b) of this
20 section. Such rules shall provide that notice given to a
21 servicer or holder is sufficient notice regardless of the
22 identity of the party or the parties liable under this title.".

1 **SEC. 9105. DEFENSE TO FORECLOSURE.**

2 Section 129C of the Truth in Lending Act is amend-
3 ed by inserting after subsection (f) (as added by section
4 9104) the following new subsections:

5 "(g) DEFENSE TO FORECLOSURE.—Notwithstanding
6 any other provision of law—

7 "(1) when the holder of a residential mortgage
8 loan or anyone acting for such holder initiates a ju-
9 dicial or nonjudicial foreclosure—

10 "(A) a consumer who has the right to re-
11 scind under this section with respect to such
12 loan against the creditor or any assignee or
13 securitizer may assert such right as a defense
14 to foreclosure or counterclaim to such fore-
15 closure against the holder, or

16 "(B) if the foreclosure proceeding begins
17 after the end of the period during which a con-
18 sumer may bring an action for rescission under
19 subsection (d) and the consumer would have
20 had a valid basis for such an action if it had
21 been brought before the end of such period, the
22 consumer may seek actual damages incurred by
23 reason of the violation which gave rise to the
24 right of rescission, together with costs of the
25 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, subject to the rights of the consumer described in this subsection, to effect a rescission or cure.".

SEC. 9106. ADDITIONAL STANDARDS AND REQUIREMENTS.

(a) IN GENERAL.—Section 129C of the Truth in Lending Act is amended by inserting after subsection (g) (as added by section 9105) the following new subsections:

"(h) PROHIBITION ON CERTAIN PREPAYMENT PENALTIES.—

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

"(2) PHASED-OUT PENALTIES ON QUALIFIED MORTGAGES.—A qualified mortgage (as defined in

1 subsection (c)) may not contain terms under which
2 a consumer must pay a prepayment penalty for pay-
3 ing all or part of the principal after the loan is con-
4 summated in excess of the following limitations:
5 "(A) During the 1-year period beginning
6 on the date the loan is consummated, the pre-
7 payment penalty shall not exceed an amount
8 equal to 3 percent of the outstanding balance
9 on the loan.
10 "(B) During the 1-year period beginning
11 after the period described in subparagraph (A),
12 the prepayment penalty shall not exceed an
13 amount equal to 2 percent of the outstanding
14 balance on the loan.
15 "(C) During the 1-year period beginning
16 after the 1-year period described in subpara-
17 graph (B), the prepayment penalty shall not ex-
18 ceed an amount equal to 1 percent of the out-
19 standing balance on the loan.
20 "(D) After the end of the 3-year period be-
21 ginning on the date the loan is consummated,
22 no prepayment penalty may be imposed on a
23 qualified mortgage.
24 "(3) OPTION FOR NO PREPAYMENT PENALTY
25 REQUIRED.—A creditor may not offer a consumer a

1 residential mortgage loan product that has a prepay-
2 ment penalty for paying all or part of the principal
3 after the loan is consummated as a term of the loan
4 without offering the consumer a residential mort-
5 gage loan product that does not have a prepayment
6 penalty as a term of the loan.

7 "(i) SINGLE PREMIUM CREDIT INSURANCE PROHIB-
8 ITED.—No creditor may finance, directly or indirectly, in
9 connection with any residential mortgage loan or with any
10 extension of credit under an open end consumer credit
11 plan secured by the principal dwelling of the consumer
12 (other than a reverse mortgage), any credit life, credit dis-
13 ability, credit unemployment or credit property insurance,
14 or any other accident, loss-of-income, life or health insur-
15 ance, or any payments directly or indirectly for any debt
16 cancellation or suspension agreement or contract, except
17 that—

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

22 "(2) this subsection shall not apply to credit
23 unemployment insurance for which the unemploy-
24 ment insurance premiums are reasonable, the cred-
25 itor receives no direct or indirect compensation in

1 connection with the unemployment insurance pre-
2 miums, and the unemployment insurance premiums
3 are paid pursuant to another insurance contract and
4 not paid to an affiliate of the creditor.
5 "(j) ARBITRATION.—
6 "(1) IN GENERAL.—No residential mortgage
7 loan and no extension of credit under an open end
8 consumer credit plan secured by the principal dwell-
9 ing of the consumer, other than a reverse mortgage,
10 may include terms which require arbitration or any
11 other nonjudicial procedure as the method for resolv-
12 ing any controversy or settling any claims arising
13 out of the transaction.
14 "(2) POST-CONTROVERSY AGREEMENTS.—Sub-
15 ject to paragraph (3), paragraph (1) shall not be
16 construed as limiting the right of the consumer and
17 the creditor, any assignee, or any securitizer to
18 agree to arbitration or any other nonjudicial proce-
19 dure as the method for resolving any controversy at
20 any time after a dispute or claim under the trans-
21 action arises.
22 "(3) NO WAIVER OF STATUTORY CAUSE OF AC-
23 TION.—No provision of any residential mortgage
24 loan or of any extension of credit under an open end
25 consumer credit plan secured by the principal dwell-

1 ing of the consumer (other than a reverse mort-
2 gage), and no other agreement between the con-
3 sumer and the creditor relating to the residential
4 mortgage loan or extension of credit referred to in
5 paragraph (1), shall be applied or interpreted so as
6 to bar a consumer from bringing an action in an ap-
7 propriate district court of the United States, or any
8 other court of competent jurisdiction, pursuant to
9 section 130 or any other provision of law, for dam-
10 ages or other relief in connection with any alleged
11 violation of this section, any other provision of this
12 title, or any other Federal law.

13 "(k) MORTGAGES WITH NEGATIVE AMORTIZA-
14 TION.—No creditor may extend credit to a borrower in
15 connection with a consumer credit transaction under an
16 open or closed end consumer credit plan secured by a
17 dwelling or residential real property that includes a dwell-
18 ing, other than a reverse mortgage, that provides or per-
19 mits a payment plan that may, at any time over the term
20 of the extension of credit, result in negative amortization
21 unless, before such transaction is consummated—

22 "(1) the creditor provides the consumer with a
23 statement that—

1 "(A) the pending transaction will or may,
2 as the case may be, result in negative amortiza-
3 tion;
4 "(B) describes negative amortization in
5 such manner as the Federal banking agencies
6 shall prescribe;
7 "(C) negative amortization increases the
8 outstanding principal balance of the account;
9 and
10 "(D) negative amortization reduces the
11 consumer's equity in the dwelling or real prop-
12 erty; and
13 "(2) in the case of a first-time borrower with
14 respect to a residential mortgage loan that is not a
15 qualified mortgage, the first-time borrower provides
16 the creditor with sufficient documentation to dem-
17 onstrate that the consumer received homeownership
18 counseling from organizations or counselors certified
19 by the Secretary of Housing and Urban Develop-
20 ment as competent to provide such counseling.".
21 (b) CONFORMING AMENDMENT RELATING TO EN-
22 FORCEMENT.—Section 108(a) of the Truth in Lending
23 Act (15 U.S.C. 1607(a)) is amended by inserting after
24 paragraph (6) the following new paragraph:

1 "(7) sections 21B and 21C of the Securities
2 Exchange Act of 1934, in the case of a broker or
3 dealer, other than a depository institution, by the
4 Securities and Exchange Commission.".
5 (c) PROTECTION AGAINST LOSS OF ANTI-DEFI-
6 CIENCY PROTECTION.—Section 129C of the Truth in
7 Lending Act is amended by inserting after subsection (k)
8 (as added by subsection (a) of this section) the following
9 new subsection (and designated succeeding subsections ac-
10 cordingly):
11 "(l) PROTECTION AGAINST LOSS OF ANTI-DEFI-
12 CIENCY PROTECTION.—
13 "(1) DEFINITION.—For purposes of this sub-
14 section, the term 'anti-deficiency law' means the law
15 of any State which provides that, in the event of
16 foreclosure on the residential property of a consumer
17 securing a mortgage, the consumer is not liable, in
18 accordance with the terms and limitations of such
19 State law, for any deficiency between the sale price
20 obtained on such property through foreclosure and
21 the outstanding balance of the mortgage.
22 "(2) NOTICE AT TIME OF CONSUMMATION.—In
23 the case of any residential mortgage loan that is, or
24 upon consummation will be, subject to protection
25 under an anti-deficiency law, the creditor or mort-

1 gage originator shall provide a written notice to the
2 consumer describing the protection provided by the
3 anti-deficiency law and the significance for the con-
4 sumer of the loss of such protection before such loan
5 is consummated.

6 "(3) NOTICE BEFORE REFINANCING THAT
7 WOULD CAUSE LOSS OF PROTECTION.—In the case
8 of any residential mortgage loan that is subject to
9 protection under an anti-deficiency law, if a creditor
10 or mortgage originator provides an application to a
11 consumer, or receives an application from a con-
12 sumer, for any type of refinancing for such loan that
13 would cause the loan to lose the protection of such
14 anti-deficiency law, the creditor or mortgage origi-
15 nator shall provide a written notice to the consumer
16 describing the protection provided by the anti-defi-
17 ciency law and the significance for the consumer of
18 the loss of such protection before any agreement for
19 any such refinancing is consummated.".

20 (d) POLICY REGARDING ACCEPTANCE OF PARTIAL
21 PAYMENT.—Section 129C of the Truth in Lending Act
22 is amended by inserting after subsection (l) (as added by
23 subsection (c)) the following new subsection:

24 "(m) POLICY REGARDING ACCEPTANCE OF PARTIAL
25 PAYMENT.—In the case of any residential mortgage loan,

1 a creditor shall disclose prior to settlement or, in the case
2 of a person becoming a creditor with respect to an existing
3 residential mortgage loan, at the time such person be-
4 comes a creditor—

5 "(1) the creditor's policy regarding the accept-
6 ance of partial payments; and

7 "(2) if partial payments are accepted, how such
8 payments will be applied to such mortgage and if
9 such payments will be placed in escrow.".

10 **SEC. 9107. RULE OF CONSTRUCTION.**

11 Except as otherwise expressly provided in section
12 129B or 129C of the Truth in Lending Act (as added by
13 this subtitle), no provision of such section 129B or 129C
14 shall be construed as superseding, repealing, or affecting
15 any duty, right, obligation, privilege, or remedy of any per-
16 son under any other provision of the Truth in Lending
17 Act or any other provision of Federal or State law.

18 **SEC. 9108. EFFECT ON STATE LAWS.**

19 (a) IN GENERAL.—Except as provided in subsection
20 (b), section 129C(d) of the Truth in Lending Act (as
21 added by section 9104) shall supersede any State law to
22 the extent that it provides additional remedies against any
23 assignee, securitizer, or securitization vehicle for a viola-
24 tion of subsection (a) or (b) of section 129C of such Act
25 or any other State law the terms of which address the

1 specific subject matter of subsection (a) (determination of
2 ability to repay) or (b) (requirement of a net tangible ben-
3 efit) of section 129C of such Act, and the remedies de-
4 scribed in section 129C(d) shall constitute the sole rem-
5 edies against any assignee, securitizer, or securitization
6 vehicle for such violations.

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

9 (1) the application of any State law, or the
10 availability of remedies under such law, against a
11 creditor for a particular residential mortgage loan
12 regardless of whether such creditor also acts as an
13 assignee, securitizer, or securitization vehicle for
14 such loan;

15 (2) the application of any State law, or the
16 availability of remedies under such law, against an
17 assignee, securitizer, or securitization vehicle under
18 State law, other than a provision of such law the
19 terms of which address the specific subject matter of
20 subsection (a) (determination of ability to repay) or
21 (b) (requirement of a net tangible benefit) of section
22 129C of such Act;

23 (3)(A) the application of any State law, or the
24 availability of remedies under such law, against an
25 assignee, securitizer or securitization vehicle for its

1 participation in or direction of the credit or under-
2 writing decisions of a creditor relating to the making
3 of a residential mortgage loan; or
4 (B) the ability of a consumer to assert any
5 rights against or obtain any remedies from an as-
6 signee, securitizer or securitization vehicle with re-
7 spect to a residential mortgage loan as a defense to
8 foreclosure under section 129C(g);
9 (4) the availability of any equitable remedies,
10 including injunctive relief, under State law; or
11 (5) notwithstanding paragraph (2), the avail-
12 ability of any remedies under State law against any
13 assignee, securitizer or securitization vehicle that—
14 (A) are in addition to those remedies pro-
15 vided for in section 129C; and
16 (B) were in effect on the date of enactment
17 of this Act.
18 **SEC. 9109. REGULATIONS.**
19 Regulations required or authorized to be prescribed
20 under this subtitle or the amendments made by this sub-
21 title—
22 (1) shall be prescribed in final form before the
23 end of the 12-month period beginning on the date of
24 the enactment of this Act; and

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

3 **SEC. 9110. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.**

4 (a) INCREASE IN AMOUNT OF CIVIL MONEY PEN-
5 ALTIES FOR CERTAIN VIOLATIONS.—Section 130(a)(2) of
6 the Truth in Lending Act (15 U.S.C. 1640(a)(2)) is
7 amended—

8 (1) by striking "$100" and inserting "$200";

9 (2) by striking "$1,000" and inserting
10 "$2,000"; and

11 (3) by striking "$500,000" and inserting
12 "$1,000,000".

13 (b) STATUTE OF LIMITATIONS EXTENDED FOR SEC-
14 TION 129 VIOLATIONS.—Section 130(e) of the Truth in
15 Lending Act (15 U.S.C. 1640(e)) is amended—

16 (1) in the first sentence, by striking "Any ac-
17 tion" and inserting "Except as provided in the sub-
18 sequent sentence, any action"; and

19 (2) by inserting after the first sentence the fol-
20 lowing new sentence: "Any action under this section
21 with respect to any violation of section 129 may be
22 brought in any United States district court, or in
23 any other court of competent jurisdiction, before the
24 end of the 3-year period beginning on the date of the
25 occurrence of the violation.".

1 **SEC. 9111. LENDER RIGHTS IN THE CONTEXT OF BOR-**
2 **ROWER DECEPTION.**

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

5 "(k) EXEMPTION FROM LIABILITY AND RESCISSION
6 IN CASE OF BORROWER FRAUD OR DECEPTION.—In ad-
7 dition to any other remedy available by law or contract,
8 no creditor, assignee, or securitizer shall be liable to an
9 obligor under this section, nor shall it be subject to the
10 right of rescission of any obligor under 129B, if such obli-
11 gor, or co-obligor, knowingly, or willfully and with actual
12 knowledge furnished material information known to be
13 false for the purpose of obtaining such residential mort-
14 gage loan.".

15 **SEC. 9112. SIX-MONTH NOTICE REQUIRED BEFORE RESET**
16 **OF HYBRID ADJUSTABLE RATE MORTGAGES.**

17 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
18 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
19 after section 128 the following new section:

20 **"§ 128A. Reset of hybrid adjustable rate mortgages**

21 "(a) HYBRID ADJUSTABLE RATE MORTGAGES DE-
22 FINED.—For purposes of this section, the term 'hybrid ad-
23 justable rate mortgage' means a consumer credit trans-
24 action secured by the consumer's principal residence with
25 a fixed interest rate for an introductory period that ad-
26 justs or resets to a variable interest rate after such period.

1 "(b) NOTICE OF RESET AND ALTERNATIVES.—During
2 the 1-month period that ends 6 months before the date
3 on which the interest rate in effect during the introductory
4 period of a hybrid adjustable rate mortgage adjusts or
5 resets to a variable interest rate or, in the case of such
6 an adjustment or resetting that occurs within the first 6
7 months after consummation of such loan, at consumma-
8 tion, the creditor or servicer of such loan shall provide a
9 written notice, separate and distinct from all other cor-
10 respondence to the consumer, that includes the following:
11 "(1) Any index or formula used in making ad-
12 justments to or resetting the interest rate and a
13 source of information about the index or formula.
14 "(2) An explanation of how the new interest
15 rate and payment would be determined, including an
16 explanation of how the index was adjusted, such as
17 by the addition of a margin.
18 "(3) A good faith estimate, based on accepted
19 industry standards, of the creditor or servicer of the
20 amount of the monthly payment that will apply after
21 the date of the adjustment or reset, and the assump-
22 tions on which this estimate is based.
23 "(4) A list of alternatives consumers may pur-
24 sue before the date of adjustment or reset, and de-

1 scriptions of the actions consumers must take to
2 pursue these alternatives, including—
3 "(A) refinancing;
4 "(B) renegotiation of loan terms;
5 "(C) payment forbearances; and
6 "(D) pre-foreclosure sales.
7 "(5) The names, addresses, telephone numbers,
8 and Internet addresses of counseling agencies or
9 programs reasonably available to the consumer that
10 have been certified or approved and made publicly
11 available by the Secretary of Housing and Urban
12 Development or a State housing finance authority
13 (as defined in section 1301 of the Financial Institu-
14 tions Reform, Recovery, and Enforcement Act of
15 1989).
16 "(6) The address, telephone number, and Inter-
17 net address for the State housing finance authority
18 (as so defined) for the State in which the consumer
19 resides.".
20 (b) CLERICAL AMENDMENT.—The table of sections
21 for chapter 2 of the Truth in Lending Act is amended
22 by inserting after the item relating to section 128 the fol-
23 lowing new item:

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

1 **SEC. 9113. REQUIRED DISCLOSURES.**

2 Section 128(a) of Truth in Lending Act (15 U.S.C.
3 1638(a)) is amended by adding at the end the following
4 new paragraphs:

5 "(16) In the case of a variable rate residential
6 mortgage loan for which an escrow or impound ac-
7 count will be established for the payment of all ap-
8 plicable taxes, insurance, and assessments—

9 "(A) the amount of initial monthly pay-
10 ment due under the loan for the payment of
11 principal and interest, and the amount of such
12 initial monthly payment including the monthly
13 payment deposited in the account for the pay-
14 ment of all applicable taxes, insurance, and as-
15 sessments; and

16 "(B) the amount of the fully indexed
17 monthly payment due under the loan for the
18 payment of principal and interest, and the
19 amount of such fully indexed monthly payment
20 including the monthly payment deposited in the
21 account for the payment of all applicable taxes,
22 insurance, and assessments.

23 "(17) In the case of a residential mortgage
24 loan, the aggregate amount of settlement charges for
25 all settlement services provided in connection with
26 the loan, the amount of charges that are included in

1 the loan and the amount of such charges the bor-
2 rower must pay at closing, the approximate amount
3 of the wholesale rate of funds in connection with the
4 loan, and the aggregate amount of other fees or re-
5 quired payments in connection with the loan.

6 "(18) In the case of a residential mortgage
7 loan, the aggregate amount of fees paid to the mort-
8 gage originator in connection with the loan, the
9 amount of such fees paid directly by the consumer,
10 and any additional amount received by the originator
11 from the creditor.

12 "(19) In the case of a residential mortgage
13 loan, the total amount of interest that the consumer
14 will pay over the life of the loan as a percentage of
15 the principal of the loan. Such amount shall be com-
16 puted assuming the consumer makes each monthly
17 payment in full and on-time, and does not make any
18 over-payments.".

19 **SEC. 9114. DISCLOSURES REQUIRED IN MONTHLY STATE-**
20 **MENTS FOR RESIDENTIAL MORTGAGE**
21 **LOANS.**

22 Section 128 of the Truth in Lending Act (15 U.S.C.
23 1638) is amended by adding at the end the following new
24 subsection:

1 "(f) PERIODIC STATEMENTS FOR RESIDENTIAL
2 MORTGAGE LOANS.—
3 "(1) IN GENERAL.—The creditor, assignee, or
4 servicer with respect to any residential mortgage
5 loan shall transmit to the obligor, for each billing
6 cycle, a statement setting forth each of the following
7 items, to the extent applicable, in a conspicuous and
8 prominent manner:
9 "(A) The amount of the principal obliga-
10 tion under the mortgage.
11 "(B) The current interest rate in effect for
12 the loan.
13 "(C) The date on which the interest rate
14 may next reset or adjust.
15 "(D) The amount of any prepayment fee
16 to be charged, if any.
17 "(E) A description of any late payment
18 fees.
19 "(F) A telephone number and electronic
20 mail address that may be used by the obligor to
21 obtain information regarding the mortgage.
22 "(G) The names, addresses, telephone
23 numbers, and Internet addresses of counseling
24 agencies or programs reasonably available to
25 the consumer that have been certified or ap-

1 proved and made publicly available by the Sec-
2 retary of Housing and Urban Development or a
3 State housing finance authority (as defined in
4 section 1301 of the Financial Institutions Re-
5 form, Recovery, and Enforcement Act of 1989).
6 "(H) Such other information as the Board
7 may prescribe in regulations.
8 "(2) DEVELOPMENT AND USE OF STANDARD
9 FORM.—The Federal banking agencies shall jointly
10 develop and prescribe a standard form for the disclo-
11 sure required under this subsection, taking into ac-
12 count that the statements required may be trans-
13 mitted in writing or electronically.".

14 **SEC. 9115. LEGAL ASSISTANCE FOR FORECLOSURE-RE-**
15 **LATED ISSUES.**

16 (a) ESTABLISHMENT.—The Secretary of Housing
17 and Urban Development (hereafter in this section referred
18 to as the "Secretary" shall establish a program for making
19 grants for providing a full range of foreclosure legal assist-
20 ance to low- and moderate-income homeowners and ten-
21 ants related to home ownership preservation, home fore-
22 closure prevention, and tenancy associated with home fore-
23 closure.
24 (b) COMPETITIVE ALLOCATION.—The Secretary shall
25 allocate amounts made available for grants under this sec-

1 tion to State and local legal organizations on the basis
2 of a competitive process. For purposes of this subsection
3 "State and local legal organizations" are those State and
4 local organizations whose primary business or mission is
5 to provide legal assistance.

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

13 (d) LEGAL ASSISTANCE.—

14 (1) IN GENERAL.—Any State or local legal or-
15 ganization that receives financial assistance pursu-
16 ant to this section may use such amounts only to as-
17 sist—

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

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

24 (2) COMMENCE USE WITHIN 90 DAYS.—Any
25 State or local legal organization that receives finan-

1 cial assistance pursuant to this section shall begin
2 using any financial assistance received under this
3 section within 90 days after receipt of the assist-
4 ance.

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

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

14 (5) EFFECTIVE DATE.—Notwithstanding sec-
15 tion 9116, this subsection shall take effect on the
16 date of the enactment of this Act.

17 (e) LIMITATION ON DISTRIBUTION OF ASSIST-
18 ANCE.—

19 (1) IN GENERAL.—None of the amounts made
20 available under this section shall be distributed to—

21 (A) any organization which has been con-
22 victed for a violation under Federal law relating
23 to an election for Federal office; or

24 (B) any organization which employs appli-
25 cable individuals.

1 (2) DEFINITION OF APPLICABLE INDIVID-
2 UALS.—In this subsection, the term "applicable indi-
3 vidual" means an individual who—
4 (A) is—
5 (i) employed by the organization in a
6 permanent or temporary capacity;
7 (ii) contracted or retained by the or-
8 ganization; or
9 (iii) acting on behalf of, or with the
10 express or apparent authority of, the orga-
11 nization; and
12 (B) has been convicted for a violation
13 under Federal law relating to an election for
14 Federal office.
15 (f) AUTHORIZATION OF APPROPRIATIONS.—There
16 are authorized to be appropriated to the Secretary
17 $35,000,000 for each of fiscal years 2009 through 2012
18 for grants under this section.
19 **SEC. 9116. EFFECTIVE DATE.**
20 The amendments made by this subtitle shall apply to
21 transactions consummated on or after the effective date
22 of the regulations specified in section 9109.
23 **SEC. 9117. REPORT BY THE GAO.**
24 (a) REPORT REQUIRED.—The Comptroller General
25 shall conduct a study to determine the effects the enact-

1 ment of this Act will have on the availability and afford-
2 ability of credit for consumers, small businesses, home-
3 buyers, and mortgage lending, including the effect—
4 (1) on the mortgage market for mortgages that
5 are not within the safe harbor provided in the
6 amendments made by this subtitle;
7 (2) on the ability of prospective homebuyers to
8 obtain financing;
9 (3) on the ability of homeowners facing resets
10 or adjustments to refinance—for example, do they
11 have fewer refinancing options due to the unavail-
12 ability of certain loan products that were available
13 before the enactment of this Act;
14 (4) on minorities' ability to access affordable
15 credit compared with other prospective borrowers;
16 (5) on home sales and construction;
17 (6) of extending the rescission right, if any, on
18 adjustable rate loans and its impact on litigation;
19 (7) of State foreclosure laws and, if any, an in-
20 vestor's ability to transfer a property after fore-
21 closure;
22 (8) of expanding the existing provisions of the
23 Home Ownership and Equity Protection Act of
24 1994;

1 (9) of prohibiting prepayment penalties on
2 high-cost mortgages; and
3 (10) of establishing counseling services under
4 the Department of Housing and Urban Development
5 and offered through the Office of Housing Coun-
6 seling.
7 (b) REPORT.—Before the end of the 1-year period be-
8 ginning on the date of the enactment of this Act, the
9 Comptroller General shall submit a report to the Congress
10 containing the findings and conclusions of the Comptroller
11 General with respect to the study conducted pursuant to
12 subsection (a).
13 (c) EXAMINATION RELATED TO CERTAIN CREDIT
14 RISK RETENTION PROVISIONS.—The report required by
15 subsection (b) shall also include an analysis by the Comp-
16 troller General of the effect on the capital reserves and
17 funding of lenders of credit risk retention provisions for
18 non-qualified mortgages, including an analysis of the ex-
19 ceptions and adjustments authorized in section
20 129C(l)(3)(A) of the Truth in Lending Act and a rec-
21 ommendation on whether a uniform standard is needed.
22 (d) ANALYSIS OF CREDIT RISK RETENTION PROVI-
23 SIONS.—The report required by subsection (b) shall also
24 include—

1 (1) an analysis by the Comptroller General of
2 whether the credit risk retention provisions have sig-
3 nificantly reduced risks to the larger credit market
4 of the repackaging and selling of securitized loans on
5 a secondary market; and
6 (2) recommendations to the Congress on adjust-
7 ments that should be made, or additional measures
8 that should be undertaken.

9 **SEC. 9118. STATE ATTORNEY GENERAL ENFORCEMENT AU-**
10 **THORITY.**

11 Section 130(e) of the Truth in Lending Act (15
12 U.S.C. 1640(e)) is amended by striking "section 129 may
13 also" and inserting "section 129, 129B, or 129C of this
14 Act may also".

15 **Subtitle C—High-Cost Mortgages**

16 **SEC. 9201. DEFINITIONS RELATING TO HIGH-COST MORT-**
17 **GAGES.**

18 (a) HIGH-COST MORTGAGE DEFINED.—Section
19 103(aa) of the Truth in Lending Act (15 U.S.C.
20 1602(aa)) is amended by striking all that precedes para-
21 graph (2) and inserting the following:
22 "(aa) HIGH-COST MORTGAGE.—
23 "(1) DEFINITION.—
24 "(A) IN GENERAL.—The term 'high-cost
25 mortgage', and a mortgage referred to in this

1 subsection, means a consumer credit trans-
2 action that is secured by the consumer's prin-
3 cipal dwelling, other than a reverse mortgage
4 transaction, if—
5 "(i) in the case of a credit transaction
6 secured—
7 "(I) by a first mortgage on the
8 consumer's principal dwelling, the an-
9 nual percentage rate at consummation
10 of the transaction will exceed by more
11 than 6.5 percentage points (8.5 per-
12 centage points, if the dwelling is per-
13 sonal property and the transaction is
14 for less than $50,000) the average
15 prime offer rate, as defined in section
16 129C(c)(2)(B), for a comparable
17 transaction; or
18 "(II) by a subordinate or junior
19 mortgage on the consumer's principal
20 dwelling, the annual percentage rate
21 at consummation of the transaction
22 will exceed by more than 8.5 percent-
23 age points the average prime offer
24 rate, as defined in section

1 129C(c)(2)(B), for a comparable
2 transaction;
3 "(ii) the total points and fees payable
4 in connection with the transaction ex-
5 ceed—
6 "(I) in the case of a transaction
7 for $20,000 or more, 5 percent of the
8 total transaction amount; or
9 "(II) in the case of a transaction
10 for less than $20,000, the lesser of 8
11 percent of the total transaction
12 amount or $1,000 (or such other dol-
13 lar amount as the Board shall pre-
14 scribe by regulation); or
15 "(iii) the credit transaction documents
16 permit the creditor to charge or collect pre-
17 payment fees or penalties more than 36
18 months after the transaction closing or
19 such fees or penalties exceed, in the aggre-
20 gate, more than 2 percent of the amount
21 prepaid.
22 "(B) INTRODUCTORY RATES TAKEN INTO
23 ACCOUNT.—For purposes of subparagraph
24 (A)(i), the annual percentage rate of interest

1 shall be determined based on the following in-
2 terest rate:
3 "(i) In the case of a fixed-rate trans-
4 action in which the annual percentage rate
5 will not vary during the term of the loan,
6 the interest rate in effect on the date of
7 consummation of the transaction.
8 "(ii) In the case of a transaction in
9 which the rate of interest varies solely in
10 accordance with an index, the interest rate
11 determined by adding the index rate in ef-
12 fect on the date of consummation of the
13 transaction to the maximum margin per-
14 mitted at any time during the transaction
15 agreement.
16 "(iii) In the case of any other trans-
17 action in which the rate may vary at any
18 time during the term of the loan for any
19 reason, the interest charged on the trans-
20 action at the maximum rate that may be
21 charged during the term of the trans-
22 action.".
23 (b) ADJUSTMENT OF PERCENTAGE POINTS.—Section
24 103(aa)(2) of the Truth in Lending Act (15 U.S.C.

1 1602(aa)(2)) is amended by striking subparagraph (B)
2 and inserting the following new subparagraph:
3 "(B) An increase or decrease under sub-
4 paragraph (A)—
5 "(i) may not result in the number of
6 percentage points referred to in paragraph
7 (1)(A)(i)(I) being less than 6 percentage
8 points or greater than 10 percentage
9 points; and
10 "(ii) may not result in the number of
11 percentage points referred to in paragraph
12 (1)(A)(i)(II) being less than 8 percentage
13 points or greater than 12 percentage
14 points.".
15 (c) POINTS AND FEES DEFINED.—
16 (1) IN GENERAL.—Section 103(aa)(4) of the
17 Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is
18 amended—
19 (A) by striking subparagraph (B) and in-
20 serting the following:
21 "(B) all compensation paid directly or indi-
22 rectly by a consumer or creditor to a mortgage
23 originator from any source, including a mort-
24 gage originator that originates a loan in the

1 name of the creditor in a table-funded trans-
2 action;";
3 (B) in subparagraph (C)(ii), by inserting
4 "except where applied to the charges set forth
5 in section 106(e)(1) where a creditor may re-
6 ceive indirect compensation solely as a result of
7 obtaining distributions of profits from an affili-
8 ated entity based on its ownership interest in
9 compliance with section 8(c)(4) of the Real Es-
10 tate Settlement Procedures Act of 1974" before
11 the semicolon at the end;
12 (C) in subparagraph (C)(iii), by striking ";
13 and" and inserting ", except as provided for in
14 clause (ii);";
15 (D) by redesignating subparagraph (D) as
16 subparagraph (G); and
17 (E) by inserting after subparagraph (C)
18 the following new subparagraphs:
19 "(D) premiums or other charges payable at
20 or before closing for any credit life, credit dis-
21 ability, credit unemployment, or credit property
22 insurance, or any other accident, loss-of-income,
23 life or health insurance, or any payments di-
24 rectly or indirectly for any debt cancellation or
25 suspension agreement or contract, except that

1 insurance premiums or debt cancellation or sus-
2 pension fees calculated and paid in full on a
3 monthly basis shall not be considered financed
4 by the creditor;
5 "(E) except as provided in subsection (cc),
6 the maximum prepayment fees and penalties
7 which may be charged or collected under the
8 terms of the credit transaction;
9 "(F) all prepayment fees or penalties that
10 are incurred by the consumer if the loan refi-
11 nances a previous loan made or currently held
12 by the same creditor or an affiliate of the cred-
13 itor; and".
14 (2) CALCULATION OF POINTS AND FEES FOR
15 OPEN-END CONSUMER CREDIT PLANS.—Section
16 103(aa) of the Truth in Lending Act (15 U.S.C.
17 1602(aa)) is amended—
18 (A) by redesignating paragraph (5) as
19 paragraph (6); and
20 (B) by inserting after paragraph (4) the
21 following new paragraph:
22 "(5) CALCULATION OF POINTS AND FEES FOR
23 OPEN-END CONSUMER CREDIT PLANS.—In the case
24 of open-end consumer credit plans, points and fees
25 shall be calculated, for purposes of this section and

1 section 129, by adding the total points and fees
2 known at or before closing, including the maximum
3 prepayment penalties which may be charged or col-
4 lected under the terms of the credit transaction, plus
5 the minimum additional fees the consumer would be
6 required to pay to draw down an amount equal to
7 the total credit line.".
8 (d) BONA FIDE DISCOUNT LOAN DISCOUNT
9 POINTS.—Section 103 of the Truth in Lending Act (15
10 U.S.C. 1602) is amended by inserting after subsection (cc)
11 (as added by section 101) the following new subsection:
12 "(dd) BONA FIDE DISCOUNT POINTS AND PREPAY-
13 MENT PENALTIES.—For the purposes of determining the
14 amount of points and fees for purposes of subsection (aa),
15 either the amounts described in paragraph (1) or (2) of
16 the following paragraphs, but not both, shall be excluded:
17 "(1) Up to and including 2 bona fide discount
18 points payable by the consumer in connection with
19 the mortgage, but only if the interest rate from
20 which the mortgage's interest rate will be discounted
21 does not exceed by more than 1 percentage point—
22 "(A) the required net yield for a 90-day
23 standard mandatory delivery commitment for a
24 reasonably comparable loan from either the
25 Federal National Mortgage Association or the

1 Federal Home Loan Mortgage Corporation,
2 whichever is greater; or
3 "(B) if secured by a personal property
4 loan, the average rate on a loan in connection
5 with which insurance is provided under title I
6 of the National Housing Act (12 U.S.C. 1702
7 et seq.).
8 "(2) Unless 2 bona fide discount points have
9 been excluded under paragraph (1), up to and in-
10 cluding 1 bona fide discount point payable by the
11 consumer in connection with the mortgage, but only
12 if the interest rate from which the mortgage's inter-
13 est rate will be discounted does not exceed by more
14 than 2 percentage points—
15 "(A) the required net yield for a 90-day
16 standard mandatory delivery commitment for a
17 reasonably comparable loan from either the
18 Federal National Mortgage Association or the
19 Federal Home Loan Mortgage Corporation,
20 whichever is greater; or
21 "(B) if secured by a personal property
22 loan, the average rate on a loan in connection
23 with which insurance is provided under title I
24 of the National Housing Act (12 U.S.C. 1702
25 et seq.).

"(3) 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.

"(4) Paragraphs (1) and (2) shall not apply to discount points used to purchase an interest rate reduction unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.".

SEC. 9202. AMENDMENTS TO EXISTING REQUIREMENTS FOR CERTAIN MORTGAGES.

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

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

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

1 of the consumer or in the case of a balance due under
2 the customary terms of a reverse mortgage.".

3 **SEC. 9203. ADDITIONAL REQUIREMENTS FOR CERTAIN**
4 **MORTGAGES.**

5 (a) ADDITIONAL REQUIREMENTS FOR CERTAIN
6 MORTGAGES.—Section 129 of the Truth in Lending Act
7 (15 U.S.C. 1639) is amended—

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

10 (2) by inserting after subsection (i) the fol-
11 lowing new subsections:

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

17 "(k) LATE FEES.—

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

21 "(A) in an amount in excess of 4 percent
22 of the amount of the payment past due;

23 "(B) unless the loan documents specifically
24 authorize the charge or fee;

1 "(C) before the end of the 15-day period
2 beginning on the date the payment is due, or in
3 the case of a loan on which interest on each in-
4 stallment is paid in advance, before the end of
5 the 30-day period beginning on the date the
6 payment is due; or
7 "(D) more than once with respect to a sin-
8 gle late payment.
9 "(2) COORDINATION WITH SUBSEQUENT LATE
10 FEES.—If a payment is otherwise a full payment for
11 the applicable period and is paid on its due date or
12 within an applicable grace period, and the only delin-
13 quency or insufficiency of payment is attributable to
14 any late fee or delinquency charge assessed on any
15 earlier payment, no late fee or delinquency charge
16 may be imposed on such payment.
17 "(3) FAILURE TO MAKE INSTALLMENT PAY-
18 MENT.—If, in the case of a loan agreement the
19 terms of which provide that any payment shall first
20 be applied to any past due principal balance, the
21 consumer fails to make an installment payment and
22 the consumer subsequently resumes making install-
23 ment payments but has not paid all past due install-
24 ments, the creditor may impose a separate late pay-
25 ment charge or fee for any principal due (without

1 deduction due to late fees or related fees) until the
2 default is cured.
3 "(l) ACCELERATION OF DEBT.—No high-cost mort-
4 gage may contain a provision which permits the creditor
5 to accelerate the indebtedness, except when repayment of
6 the loan has been accelerated by default in payment, or
7 pursuant to a due-on-sale provision, or pursuant to a ma-
8 terial violation of some other provision of the loan docu-
9 ment unrelated to payment schedule.
10 "(m) RESTRICTION ON FINANCING POINTS AND
11 FEES.—No creditor may directly or indirectly finance, in
12 connection with any high-cost mortgage, any of the fol-
13 lowing:
14 "(1) Any prepayment fee or penalty payable by
15 the consumer in a refinancing transaction if the
16 creditor or an affiliate of the creditor is the
17 noteholder of the note being refinanced.
18 "(2) Any points or fees.".
19 (b) PROHIBITIONS ON EVASIONS.—Section 129 of
20 the Truth in Lending Act (15 U.S.C. 1639) is amended
21 by inserting after subsection (p) (as so redesignated by
22 subsection (a)(1)) the following new subsection:
23 "(q) PROHIBITIONS ON EVASIONS, STRUCTURING OF
24 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A

1 creditor may not take any action in connection with a
2 high-cost mortgage—
3 "(1) to structure a loan transaction as an open-
4 end credit plan or another form of loan for the pur-
5 pose and with the intent of evading the provisions of
6 this title; or
7 "(2) to divide any loan transaction into sepa-
8 rate parts for the purpose and with the intent of
9 evading provisions of this title.".
10 (c) MODIFICATION OR DEFERRAL FEES.—Section
11 129 of the Truth in Lending Act (15 U.S.C. 1639) is
12 amended by inserting after subsection (q) (as added by
13 subsection (b) of this section) the following new sub-
14 section:
15 "(r) MODIFICATION AND DEFERRAL FEES PROHIB-
16 ITED.—
17 "(1) CREDITORS.—A creditor may not charge a
18 consumer any fee to modify, renew, extend, or
19 amend a high-cost mortgage, or to defer any pay-
20 ment due under the terms of such mortgage, unless
21 the modification, renewal, extension or amendment
22 results in a lower annual percentage rate on the
23 mortgage for the consumer and then only if the
24 amount of the fee is comparable to fees imposed for
25 similar transactions in connection with consumer

1 credit transactions that are secured by a consumer's
2 principal dwelling and are not high-cost mortgages.
3 "(2) THIRD PARTIES.—A third-party may not
4 charge a consumer any fee to—
5 "(A) modify, renew, extend, or amend a
6 high-cost mortgage, or defer any payment due
7 under the terms of such mortgage;
8 "(B) negotiate with a creditor on behalf of
9 a consumer, the modification, renewal, exten-
10 sion, or amendment of a high-cost mortgage; or
11 "(C) negotiate with a creditor on behalf of
12 a consumer, the deferral of any payment due
13 under the terms of such mortgage,
14 unless the modification renewal, extension or amend-
15 ment results in a significantly lower annual percent-
16 age rate on the mortgage, or a significant reduction
17 in the amount of the outstanding principal on the
18 mortgage, for the consumer and then only if the
19 amount of the fee is comparable to fees imposed for
20 similar transactions in connection with consumer
21 credit transactions that are secured by a consumer's
22 principal dwelling and are not high-cost mortgages.
23 "(3) ENFORCEMENT.—Section 130 shall be ap-
24 plied for purposes of paragraph (2) by—

1 "(A) substituting 'third party' for
2 'creditor'each place such term appears; and
3 "(B) substituting 'any fee charged by a
4 third party' for 'finance charge' each place such
5 term appears.".
6 (d) PAYOFF STATEMENT.—Section 129 of the Truth
7 in Lending Act (15 U.S.C. 1639) is amended by inserting
8 after subsection (r) (as added by subsection (c) of this
9 section) the following new subsection:
10 "(s) PAYOFF STATEMENT.—
11 "(1) FEES.—
12 "(A) IN GENERAL.—Except as provided in
13 subparagraph (B), no creditor or servicer may
14 charge a fee for informing or transmitting to
15 any person the balance due to pay off the out-
16 standing balance on a high-cost mortgage.
17 "(B) TRANSACTION FEE.—When payoff in-
18 formation referred to in subparagraph (A) is
19 provided by facsimile transmission or by a cou-
20 rier service, a creditor or servicer may charge a
21 processing fee to cover the cost of such trans-
22 mission or service in an amount not to exceed
23 an amount that is comparable to fees imposed
24 for similar services provided in connection with
25 consumer credit transactions that are secured

1 by the consumer's principal dwelling and are
2 not high-cost mortgages.
3 "(C) FEE DISCLOSURE.—Prior to charging
4 a transaction fee as provided in subparagraph
5 (B), a creditor or servicer shall disclose that
6 payoff balances are available for free pursuant
7 to subparagraph (A).
8 "(D) MULTIPLE REQUESTS.—If a creditor
9 or servicer has provided payoff information re-
10 ferred to in subparagraph (A) without charge,
11 other than the transaction fee allowed by sub-
12 paragraph (B), on 4 occasions during a cal-
13 endar year, the creditor or servicer may there-
14 after charge a reasonable fee for providing such
15 information during the remainder of the cal-
16 endar year.
17 "(2) PROMPT DELIVERY.—Payoff balances shall
18 be provided within 5 business days after receiving a
19 request by a consumer or a person authorized by the
20 consumer to obtain such information.
21 "(3) SERVICES CONSIDERED ASSIGNEE.—For
22 the purposes of this subsection, a servicer shall be
23 considered an assignee under the Truth in Lending
24 Act.".

1 (e) PRE-LOAN COUNSELING REQUIRED.—Section
2 129 of the Truth in Lending Act (15 U.S.C. 1639) is
3 amended by inserting after subsection (s) (as added by
4 subsection (d) of this section) the following new sub-
5 section:

6 "(t) PRE-LOAN COUNSELING.—

7 "(1) IN GENERAL.—A creditor may not extend
8 credit to a consumer under a high-cost mortgage
9 without first receiving certification from a counselor
10 that is approved by the Secretary of Housing and
11 Urban Development, or at the discretion of the Sec-
12 retary, a State housing finance authority, that the
13 consumer has received counseling on the advisability
14 of the mortgage. Such counselor shall not be em-
15 ployed by the creditor or an affiliate of the creditor
16 or be affiliated with the creditor.

17 "(2) DISCLOSURES REQUIRED PRIOR TO COUN-
18 SELING.—No counselor may certify that a consumer
19 has received counseling on the advisability of the
20 high-cost mortgage unless the counselor can verify
21 that the consumer has received each statement re-
22 quired (in connection with such loan) by this section
23 or the Real Estate Settlement Procedures Act of
24 1974 with respect to the transaction.

1 "(3) REGULATIONS.—The Board may prescribe
2 such regulations as the Board determines to be ap-
3 propriate to carry out the requirements of paragraph
4 (1).".
5 (f) FLIPPING PROHIBITED.—Section 129 of the
6 Truth in Lending Act (15 U.S.C. 1639) is amended by
7 inserting after subsection (t) (as added by subsection (e))
8 the following new subsection:
9 "(u) FLIPPING.—
10 "(1) IN GENERAL.—No creditor may knowingly
11 or intentionally engage in the unfair act or practice
12 of flipping in connection with a high-cost mortgage.
13 "(2) FLIPPING DEFINED.—For purposes of this
14 subsection, the term 'flipping' means the making of
15 a loan or extension of credit in the form a high-cost
16 mortgage to a consumer which refinances an existing
17 mortgage when the new loan or extension of credit
18 does not have reasonable, net tangible benefit (as de-
19 termined in accordance with regulations prescribed
20 under section 129C(b)) to the consumer considering
21 all of the circumstances, including the terms of both
22 the new and the refinanced loans or credit, the cost
23 of the new loan or credit, and the consumer's cir-
24 cumstances.

1 "(v) CORRECTIONS AND UNINTENTIONAL VIOLA-
2 TIONS.—A creditor or assignee in a high cost loan who,
3 when acting in good faith, fails to comply with any re-
4 quirement under this section will not be deemed to have
5 violated such requirement if the creditor or assignee estab-
6 lishes that either—
7 "(1) within 30 days of the loan closing and
8 prior to the institution of any action, the consumer
9 is notified of or discovers the violation, appropriate
10 restitution is made, and whatever adjustments are
11 necessary are made to the loan to either, at the
12 choice of the consumer—
13 "(A) make the loan satisfy the require-
14 ments of this chapter; or
15 "(B) in the case of a high-cost mortgage,
16 change the terms of the loan in a manner bene-
17 ficial to the consumer so that the loan will no
18 longer be a high-cost mortgage; or
19 "(2) within 60 days of the creditor's discovery
20 or receipt of notification of an unintentional viola-
21 tion or bona fide error as described in subsection (c)
22 and prior to the institution of any action, the con-
23 sumer is notified of the compliance failure, appro-
24 priate restitution is made, and whatever adjustments

1 are necessary are made to the loan to either, at the
2 choice of the consumer—
3 "(A) make the loan satisfy the require-
4 ments of this chapter; or
5 "(B) in the case of a high-cost mortgage,
6 change the terms of the loan in a manner bene-
7 ficial so that the loan will no longer be a high-
8 cost mortgage.".

9 **SEC. 9204. REGULATIONS.**

10 (a) IN GENERAL.—The Board of Governors of the
11 Federal Reserve System shall publish regulations imple-
12 menting this subtitle and the amendments made by this
13 subtitle in final form before the end of the 6-month period
14 beginning on the date of the enactment of this Act.

15 (b) CONSUMER MORTGAGE EDUCATION.—
16 (1) REGULATIONS.—The Board of Governors of
17 the Federal Reserve System may prescribe regula-
18 tions requiring or encouraging creditors to provide
19 consumer mortgage education to prospective cus-
20 tomers or direct such customers to qualified con-
21 sumer mortgage education or counseling programs
22 in the vicinity of the residence of the consumer.
23 (2) COORDINATION WITH STATE LAW.—No re-
24 quirement established by the Board of Governors of
25 the Federal Reserve System pursuant to paragraph

1 (1) shall be construed as affecting or superseding
2 any requirement under the law of any State with re-
3 spect to consumer mortgage counseling or education.

4 **SEC. 9205. EFFECTIVE DATE.**

5 The amendments made by this subtitle shall take ef-
6 fect at the end of the 6-month period beginning on the
7 date of the enactment of this Act and shall apply to mort-
8 gages referred to in section 103(aa) of the Truth in Lend-
9 ing Act (15 U.S.C. 1602(aa)) for which an application is
10 received by the creditor after the end of such period.

11 Subtitle D—Office of Housing
12 Counseling

13 **SEC. 9301. SHORT TITLE.**

14 This subtitle may be cited as the "Expand and Pre-
15 serve Home Ownership Through Counseling Act".

16 **SEC. 9302. ESTABLISHMENT OF OFFICE OF HOUSING COUN-**
17 **SELING.**

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

21 "(g) OFFICE OF HOUSING COUNSELING.—

22 "(1) ESTABLISHMENT.—There is established,
23 in the Department, the Office of Housing Coun-
24 seling.

1 "(2) DIRECTOR.—There is established the posi-
2 tion of Director of Housing Counseling. The Direc-
3 tor shall be the head of the Office of Housing Coun-
4 seling and shall be appointed by, and shall report to,
5 the Secretary. Such position shall be a career-re-
6 served position in the Senior Executive Service.
7 "(3) FUNCTIONS.—
8 "(A) IN GENERAL.—The Director shall
9 have primary responsibility within the Depart-
10 ment for all activities and matters relating to
11 homeownership counseling and rental housing
12 counseling, including—
13 "(i) research, grant administration,
14 public outreach, and policy development re-
15 lating to such counseling; and
16 "(ii) establishment, coordination, and
17 administration of all regulations, require-
18 ments, standards, and performance meas-
19 ures under programs and laws adminis-
20 tered by the Department that relate to
21 housing counseling, homeownership coun-
22 seling (including maintenance of homes),
23 mortgage-related counseling (including
24 home equity conversion mortgages and
25 credit protection options to avoid fore-

1 closure), and rental housing counseling, in-
2 cluding the requirements, standards, and
3 performance measures relating to housing
4 counseling.
5 "(B) SPECIFIC FUNCTIONS.—The Director
6 shall carry out the functions assigned to the Di-
7 rector and the Office under this section and any
8 other provisions of law. Such functions shall in-
9 clude establishing rules necessary for—
10 "(i) the counseling procedures under
11 section 106(g)(1) of the Housing and
12 Urban Development Act of 1968 (12
13 U.S.C. 1701x(h)(1));
14 "(ii) carrying out all other functions
15 of the Secretary under section 106(g) of
16 the Housing and Urban Development Act
17 of 1968, including the establishment, oper-
18 ation, and publication of the availability of
19 the toll-free telephone number under para-
20 graph (2) of such section;
21 "(iii) contributing to the preparation
22 and distribution of home buying informa-
23 tion booklets pursuant to section 5 of the
24 Real Estate Settlement Procedures Act of
25 1974 (12 U.S.C. 2604);

1 "(iv) carrying out the certification
2 program under section 106(e) of the Hous-
3 ing and Urban Development Act of 1968
4 (12 U.S.C. 1701x(e));
5 "(v) carrying out the assistance pro-
6 gram under section 106(a)(4) of the Hous-
7 ing and Urban Development Act of 1968,
8 including criteria for selection of applica-
9 tions to receive assistance;
10 "(vi) carrying out any functions re-
11 garding abusive, deceptive, or unscrupulous
12 lending practices relating to residential
13 mortgage loans that the Secretary con-
14 siders appropriate, which shall include con-
15 ducting the study under section 6 of the
16 Expand and Preserve Home Ownership
17 Through Counseling Act;
18 "(vii) providing for operation of the
19 advisory committee established under para-
20 graph (4) of this subsection;
21 "(viii) collaborating with community-
22 based organizations with expertise in the
23 field of housing counseling; and
24 "(ix) providing for the building of ca-
25 pacity to provide housing counseling serv-

1 ices in areas that lack sufficient services,
2 including underdeveloped areas that lack
3 basic water and sewer systems, electricity
4 services, and safe, sanitary housing.
5 "(4) ADVISORY COMMITTEE.—
6 "(A) IN GENERAL.—The Secretary shall
7 appoint an advisory committee to provide advice
8 regarding the carrying out of the functions of
9 the Director.
10 "(B) MEMBERS.—Such advisory committee
11 shall consist of not more than 12 individuals,
12 and the membership of the committee shall
13 equally represent the mortgage and real estate
14 industry, including consumers and housing
15 counseling agencies certified by the Secretary.
16 "(C) TERMS.—Except as provided in sub-
17 paragraph (D), each member of the advisory
18 committee shall be appointed for a term of 3
19 years. Members may be reappointed at the dis-
20 cretion of the Secretary.
21 "(D) TERMS OF INITIAL APPOINTEES.—As
22 designated by the Secretary at the time of ap-
23 pointment, of the members first appointed to
24 the advisory committee, 4 shall be appointed for

1 a term of 1 year and 4 shall be appointed for
2 a term of 2 years.
3 "(E) PROHIBITION OF PAY; TRAVEL EX-
4 PENSES.—Members of the advisory committee
5 shall serve without pay, but shall receive travel
6 expenses, including per diem in lieu of subsist-
7 ence, in accordance with applicable provisions
8 under subchapter I of chapter 57 of title 5,
9 United States Code.
10 "(F) ADVISORY ROLE ONLY.—The advi-
11 sory committee shall have no role in reviewing
12 or awarding housing counseling grants.
13 "(5) SCOPE OF HOMEOWNERSHIP COUN-
14 SELING.—In carrying out the responsibilities of the
15 Director, the Director shall ensure that homeowner-
16 ship counseling provided by, in connection with, or
17 pursuant to any function, activity, or program of the
18 Department addresses the entire process of home-
19 ownership, including the decision to purchase a
20 home, the selection and purchase of a home, issues
21 arising during or affecting the period of ownership
22 of a home (including refinancing, default and fore-
23 closure, and other financial decisions), and the sale
24 or other disposition of a home.".

1 **SEC. 9303. COUNSELING PROCEDURES.**

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

6 "(g) PROCEDURES AND ACTIVITIES.—

7 "(1) COUNSELING PROCEDURES.—

8 "(A) IN GENERAL.—The Secretary shall
9 establish, coordinate, and monitor the adminis-
10 tration by the Department of Housing and
11 Urban Development of the counseling proce-
12 dures for homeownership counseling and rental
13 housing counseling provided in connection with
14 any program of the Department, including all
15 requirements, standards, and performance
16 measures that relate to homeownership and
17 rental housing counseling.

18 "(B) HOMEOWNERSHIP COUNSELING.—
19 For purposes of this subsection and as used in
20 the provisions referred to in this subparagraph,
21 the term 'homeownership counseling' means
22 counseling related to homeownership and resi-
23 dential mortgage loans. Such term includes
24 counseling related to homeownership and resi-
25 dential mortgage loans that is provided pursu-
26 ant to—

1 "(i) section 105(a)(20) of the Housing
2 and Community Development Act of 1974
3 (42 U.S.C. 5305(a)(20));
4 "(ii) in the United States Housing
5 Act of 1937—
6 "(I) section 9(e) (42 U.S.C.
7 1437g(e));
8 "(II) section 8(y)(1)(D) (42
9 U.S.C. 1437f(y)(1)(D));
10 "(III) section 18(a)(4)(D) (42
11 U.S.C. 1437p(a)(4)(D));
12 "(IV) section 23(c)(4) (42 U.S.C.
13 1437u(c)(4));
14 "(V) section 32(e)(4) (42 U.S.C.
15 1437z–4(e)(4));
16 "(VI) section 33(d)(2)(B) (42
17 U.S.C. 1437z–5(d)(2)(B));
18 "(VII) sections 302(b)(6) and
19 303(b)(7) (42 U.S.C. 1437aaa–
20 1(b)(6), 1437aaa–2(b)(7)); and
21 "(VIII) section 304(c)(4) (42
22 U.S.C. 1437aaa–3(c)(4));
23 "(iii) section 302(a)(4) of the Amer-
24 ican Homeownership and Economic Oppor-
25 tunity Act of 2000 (42 U.S.C. 1437f note);

1 "(iv) sections 233(b)(2) and 258(b) of
2 the Cranston-Gonzalez National Affordable
3 Housing Act (42 U.S.C. 12773(b)(2),
4 12808(b));
5 "(v) this section and section 101(e) of
6 the Housing and Urban Development Act
7 of 1968 (12 U.S.C. 1701x, 1701w(e));
8 "(vi) section 220(d)(2)(G) of the Low-
9 Income Housing Preservation and Resident
10 Homeownership Act of 1990 (12 U.S.C.
11 4110(d)(2)(G));
12 "(vii) sections 422(b)(6), 423(b)(7),
13 424(c)(4), 442(b)(6), and 443(b)(6) of the
14 Cranston-Gonzalez National Affordable
15 Housing Act (42 U.S.C. 12872(b)(6),
16 12873(b)(7), 12874(c)(4), 12892(b)(6),
17 and 12893(b)(6));
18 "(viii) section 491(b)(1)(F)(iii) of the
19 McKinney-Vento Homeless Assistance Act
20 (42 U.S.C. 11408(b)(1)(F)(iii));
21 "(ix) sections 202(3) and
22 810(b)(2)(A) of the Native American
23 Housing and Self-Determination Act of
24 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));
25 "(x) in the National Housing Act—

1 "(I) in section 203 (12 U.S.C.
2 1709), the penultimate undesignated
3 paragraph of paragraph (2) of sub-
4 section (b), subsection (c)(2)(A), and
5 subsection (r)(4);
6 "(II) subsections (a) and (c)(3)
7 of section 237 (12 U.S.C. 1715z–2);
8 and
9 "(III) subsections (d)(2)(B) and
10 (m)(1) of section 255 (12 U.S.C.
11 1715z–20);
12 "(xi) section 502(h)(4)(B) of the
13 Housing Act of 1949 (42 U.S.C.
14 1472(h)(4)(B));
15 "(xii) section 508 of the Housing and
16 Urban Development Act of 1970 (12
17 U.S.C. 1701z–7); and
18 "(xiii) section 106 of the Energy Pol-
19 icy Act of 1992 (42 U.S.C. 12712 note).
20 "(C) RENTAL HOUSING COUNSELING.—
21 For purposes of this subsection, the term 'rent-
22 al housing counseling' means counseling related
23 to rental of residential property, which may in-
24 clude counseling regarding future homeowner-
25 ship opportunities and providing referrals for

1 renters and prospective renters to entities pro-
2 viding counseling and shall include counseling
3 related to such topics that is provided pursuant
4 to—
5 "(i) section 105(a)(20) of the Housing
6 and Community Development Act of 1974
7 (42 U.S.C. 5305(a)(20));
8 "(ii) in the United States Housing
9 Act of 1937—
10 "(I) section 9(e) (42 U.S.C.
11 1437g(e));
12 "(II) section 18(a)(4)(D) (42
13 U.S.C. 1437p(a)(4)(D));
14 "(III) section 23(c)(4) (42
15 U.S.C. 1437u(c)(4));
16 "(IV) section 32(e)(4) (42 U.S.C.
17 1437z–4(e)(4));
18 "(V) section 33(d)(2)(B) (42
19 U.S.C. 1437z–5(d)(2)(B)); and
20 "(VI) section 302(b)(6) (42
21 U.S.C. 1437aaa–1(b)(6));
22 "(iii) section 233(b)(2) of the Cran-
23 ston-Gonzalez National Affordable Housing
24 Act (42 U.S.C. 12773(b)(2));

1 "(iv) section 106 of the Housing and
2 Urban Development Act of 1968 (12
3 U.S.C. 1701x);
4 "(v) section 422(b)(6) of the Cran-
5 ston-Gonzalez National Affordable Housing
6 Act (42 U.S.C. 12872(b)(6));
7 "(vi) section 491(b)(1)(F)(iii) of the
8 McKinney-Vento Homeless Assistance Act
9 (42 U.S.C. 11408(b)(1)(F)(iii));
10 "(vii) sections 202(3) and
11 810(b)(2)(A) of the Native American
12 Housing and Self-Determination Act of
13 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));
14 and
15 "(viii) the rental assistance program
16 under section 8 of the United States Hous-
17 ing Act of 1937 (42 U.S.C. 1437f).
18 "(2) STANDARDS FOR MATERIALS.—The Sec-
19 retary, in consultation with the advisory committee
20 established under subsection (g)(4) of the Depart-
21 ment of Housing and Urban Development Act, shall
22 establish standards for materials and forms to be
23 used, as appropriate, by organizations providing
24 homeownership counseling services, including any re-
25 cipients of assistance pursuant to subsection (a)(4).

1 "(3) MORTGAGE SOFTWARE SYSTEMS.—

2 "(A) CERTIFICATION.—The Secretary shall
3 provide for the certification of various computer
4 software programs for consumers to use in eval-
5 uating different residential mortgage loan pro-
6 posals. The Secretary shall require, for such
7 certification, that the mortgage software sys-
8 tems take into account—

9 "(i) the consumer's financial situation
10 and the cost of maintaining a home, in-
11 cluding insurance, taxes, and utilities;

12 "(ii) the amount of time the consumer
13 expects to remain in the home or expected
14 time to maturity of the loan; and

15 "(iii) such other factors as the Sec-
16 retary considers appropriate to assist the
17 consumer in evaluating whether to pay
18 points, to lock in an interest rate, to select
19 an adjustable or fixed rate loan, to select
20 a conventional or government-insured or
21 guaranteed loan and to make other choices
22 during the loan application process.

23 If the Secretary determines that available exist-
24 ing software is inadequate to assist consumers
25 during the residential mortgage loan application

1 process, the Secretary shall arrange for the de-
2 velopment by private sector software companies
3 of new mortgage software systems that meet
4 the Secretary's specifications.

5 "(B) USE AND INITIAL AVAILABILITY.—
6 Such certified computer software programs
7 shall be used to supplement, not replace, hous-
8 ing counseling. The Secretary shall provide that
9 such programs are initially used only in connec-
10 tion with the assistance of housing counselors
11 certified pursuant to subsection (e).

12 "(C) AVAILABILITY.—After a period of ini-
13 tial availability under subparagraph (B) as the
14 Secretary considers appropriate, the Secretary
15 shall take reasonable steps to make mortgage
16 software systems certified pursuant to this
17 paragraph widely available through the Internet
18 and at public locations, including public librar-
19 ies, senior-citizen centers, public housing sites,
20 offices of public housing agencies that admin-
21 ister rental housing assistance vouchers, and
22 housing counseling centers.

23 "(D) BUDGET COMPLIANCE.—This para-
24 graph shall be effective only to the extent that

1 amounts to carry out this paragraph are made
2 available in advance in appropriations Acts.
3 "(4) NATIONAL PUBLIC SERVICE MULTIMEDIA
4 CAMPAIGNS TO PROMOTE HOUSING COUNSELING.—
5 "(A) IN GENERAL.—The Director of Hous-
6 ing Counseling shall develop, implement, and
7 conduct national public service multimedia cam-
8 paigns designed to make persons facing mort-
9 gage foreclosure, persons considering a
10 subprime mortgage loan to purchase a home, el-
11 derly persons, persons who face language bar-
12 riers, low-income persons, minorities, and other
13 potentially vulnerable consumers aware that it
14 is advisable, before seeking or maintaining a
15 residential mortgage loan, to obtain homeowner-
16 ship counseling from an unbiased and reliable
17 sources and that such homeownership coun-
18 seling is available, including through programs
19 sponsored by the Secretary of Housing and
20 Urban Development.
21 "(B) CONTACT INFORMATION.—Each seg-
22 ment of the multimedia campaign under sub-
23 paragraph (A) shall publicize the toll-free tele-
24 phone number and website of the Department
25 of Housing and Urban Development through

1 which persons seeking housing counseling can
2 locate a housing counseling agency in their
3 State that is certified by the Secretary of Hous-
4 ing and Urban Development and can provide
5 advice on buying a home, renting, defaults,
6 foreclosures, credit issues, and reverse mort-
7 gages.

8 "(C) AUTHORIZATION OF APPROPRIA-
9 TIONS.—There are authorized to be appro-
10 priated to the Secretary, not to exceed
11 $3,000,000 for fiscal years 2009, 2010, and
12 2011, for the development, implementation, and
13 conduct of national public service multimedia
14 campaigns under this paragraph.

15 "(D) FORECLOSURE RESCUE EDUCATION
16 PROGRAMS.—

17 "(i) IN GENERAL.—Ten percent of
18 any funds appropriated pursuant to the
19 authorization under subparagraph (C)
20 shall be used by the Director of Housing
21 Counseling to conduct an education pro-
22 gram in areas that have a high density of
23 foreclosure. Such program shall involve di-
24 rect mailings to persons living in such
25 areas describing—

1 "(I) tips on avoiding foreclosure
2 rescue scams;
3 "(II) tips on avoiding predatory
4 lending mortgage agreements;
5 "(III) tips on avoiding for-profit
6 foreclosure counseling services; and
7 "(IV) local counseling resources
8 that are approved by the Department
9 of Housing and Urban Development.
10 "(ii) PROGRAM EMPHASIS.—In con-
11 ducting the education program described
12 under clause (i), the Director of Housing
13 Counseling shall also place an emphasis on
14 serving communities that have a high per-
15 centage of retirement communities or a
16 high percentage of low-income minority
17 communities.
18 "(iii) TERMS DEFINED.—For pur-
19 poses of this subparagraph:
20 "(I) HIGH DENSITY OF FORE-
21 CLOSURES.—An area has a 'high den-
22 sity of foreclosures' if such area is one
23 of the metropolitan statistical areas
24 (as that term is defined by the Direc-
25 tor of the Office of Management and

1 Budget) with the highest home fore-
2 closure rates.
3 "(II) HIGH PERCENTAGE OF RE-
4 TIREMENT COMMUNITIES.—An area
5 has a 'high percentage of retirement
6 communities' if such area is one of
7 the metropolitan statistical areas (as
8 that term is defined by the Director of
9 the Office of Management and Budg-
10 et) with the highest percentage of
11 residents aged 65 or older.
12 "(III) HIGH PERCENTAGE OF
13 LOW-INCOME MINORITY COMMU-
14 NITIES.—An area has a 'high percent-
15 age of low-income minority commu-
16 nities' if such area contains a higher-
17 than-normal percentage of residents
18 who are both minorities and low-in-
19 come, as defined by the Director of
20 Housing Counseling.
21 "(5) EDUCATION PROGRAMS.—The Secretary
22 shall provide advice and technical assistance to
23 States, units of general local government, and non-
24 profit organizations regarding the establishment and
25 operation of, including assistance with the develop-

1 ment of content and materials for, educational pro-
2 grams to inform and educate consumers, particularly
3 those most vulnerable with respect to residential
4 mortgage loans (such as elderly persons, persons
5 facing language barriers, low-income persons, mi-
6 norities, and other potentially vulnerable con-
7 sumers), regarding home mortgages, mortgage refi-
8 nancing, home equity loans, home repair loans, and
9 where appropriate by region, any requirements and
10 costs associated with obtaining flood or other dis-
11 aster-specific insurance coverage.".
12 (b) CONFORMING AMENDMENTS TO GRANT PRO-
13 GRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZA-
14 TIONS.—Section 106(c)(5)(A)(ii) of the Housing and
15 Urban Development Act of 1968 (12 U.S.C.
16 1701x(c)(5)(A)(ii)) is amended—
17 (1) in subclause (III), by striking "and" at the
18 end;
19 (2) in subclause (IV) by striking the period at
20 the end and inserting "; and"; and
21 (3) by inserting after subclause (IV) the fol-
22 lowing new subclause:
23 "(V) notify the housing or mort-
24 gage applicant of the availability of

1 mortgage software systems provided
2 pursuant to subsection (g)(3).".

3 **SEC. 9304. GRANTS FOR HOUSING COUNSELING ASSIST-**
4 **ANCE.**

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

8 "(4) HOMEOWNERSHIP AND RENTAL COUNSELING
9 ASSISTANCE.—

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

14 "(B) QUALIFIED ENTITIES.—The Secretary
15 shall establish standards and guidelines for eligibility
16 of organizations (including governmental and non-
17 profit organizations) to receive assistance under this
18 paragraph, in accordance with subparagraph (D).

19 "(C) DISTRIBUTION.—Assistance made avail-
20 able under this paragraph shall be distributed in a
21 manner that encourages efficient and successful
22 counseling programs and that ensures adequate dis-
23 tribution of amounts for rural areas having tradi-
24 tionally low levels of access to such counseling serv-
25 ices, including areas with insufficient access to the

1 Internet. In distributing such assistance, the Sec-
2 retary may give priority consideration to entities
3 serving areas with the highest home foreclosure
4 rates.

5 "(D) LIMITATION ON DISTRIBUTION OF ASSIST-
6 ANCE.—

7 "(i) IN GENERAL.—None of the amounts
8 made available under this paragraph shall be
9 distributed to—

10 "(I) any organization which has been
11 convicted for a violation under Federal law
12 relating to an election for Federal office; or

13 "(II) any organization which employs
14 applicable individuals.

15 "(ii) DEFINITION OF APPLICABLE INDIVID-
16 UALS.—In this subparagraph, the term 'appli-
17 cable individual' means an individual who—

18 "(I) is—

19 "(aa) employed by the organiza-
20 tion in a permanent or temporary ca-
21 pacity;

22 "(bb) contracted or retained by
23 the organization; or

1 "(cc) acting on behalf of, or with
2 the express or apparent authority of,
3 the organization; and
4 "(II) has been convicted for a viola-
5 tion under Federal law relating to an elec-
6 tion for Federal office.
7 "(E) GRANTMAKING PROCESS.—In making as-
8 sistance available under this paragraph, the Sec-
9 retary shall consider appropriate ways of stream-
10 lining and improving the processes for grant applica-
11 tion, review, approval, and award.
12 "(F) AUTHORIZATION OF APPROPRIATIONS.—
13 There are authorized to be appropriated
14 $45,000,000 for each of fiscal years 2009 through
15 2012 for—
16 "(i) the operations of the Office of Hous-
17 ing Counseling of the Department of Housing
18 and Urban Development;
19 "(ii) the responsibilities of the Director of
20 Housing Counseling under paragraphs (2)
21 through (5) of subsection (g); and
22 "(iii) assistance pursuant to this para-
23 graph for entities providing homeownership and
24 rental counseling.".

1 **SEC. 9305. REQUIREMENTS TO USE HUD-CERTIFIED COUN-**
2 **SELORS UNDER HUD PROGRAMS.**

3 Section 106(e) of the Housing and Urban Develop-
4 ment Act of 1968 (12 U.S.C. 1701x(e)) is amended—

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

7 "(1) REQUIREMENT FOR ASSISTANCE.—An or-
8 ganization may not receive assistance for counseling
9 activities under subsection (a)(1)(iii), (a)(2), (a)(4),
10 (c), or (d) of this section, or under section 101(e),
11 unless the organization, or the individuals through
12 which the organization provides such counseling, has
13 been certified by the Secretary under this subsection
14 as competent to provide such counseling.";

15 (2) in paragraph (2)—

16 (A) by inserting "and for certifying organi-
17 zations" before the period at the end of the
18 first sentence; and

19 (B) in the second sentence by striking "for
20 certification" and inserting ", for certification
21 of an organization, that each individual through
22 which the organization provides counseling shall
23 demonstrate, and, for certification of an indi-
24 vidual,";

25 (3) in paragraph (3), by inserting "organiza-
26 tions and" before "individuals";

1 (4) by redesignating paragraph (3) as para-
2 graph (5); and
3 (5) by inserting after paragraph (2) the fol-
4 lowing new paragraphs:
5 "(3) REQUIREMENT UNDER HUD PROGRAMS.—
6 Any homeownership counseling or rental housing
7 counseling (as such terms are defined in subsection
8 (g)(1)) required under, or provided in connection
9 with, any program administered by the Department
10 of Housing and Urban Development shall be pro-
11 vided only by organizations or counselors certified by
12 the Secretary under this subsection as competent to
13 provide such counseling.
14 "(4) OUTREACH.—The Secretary shall take
15 such actions as the Secretary considers appropriate
16 to ensure that individuals and organizations pro-
17 viding homeownership or rental housing counseling
18 are aware of the certification requirements and
19 standards of this subsection and of the training and
20 certification programs under subsection (f).".
21 **SEC. 9306. STUDY OF DEFAULTS AND FORECLOSURES.**
22 The Secretary of Housing and Urban Development
23 shall conduct an extensive study of the root causes of de-
24 fault and foreclosure of home loans, using as much empir-
25 ical data as are available. The study shall also examine

1 the role of escrow accounts in helping prime and nonprime
2 borrowers to avoid defaults and foreclosures, and the role
3 of computer registries of mortgages, including those used
4 for trading mortgage loans. Not later than 12 months
5 after the date of the enactment of this Act, the Secretary
6 shall submit to the Congress a preliminary report regard-
7 ing the study. Not later than 24 months after such date
8 of enactment, the Secretary shall submit a final report re-
9 garding the results of the study, which shall include any
10 recommended legislation relating to the study, and rec-
11 ommendations for best practices and for a process to iden-
12 tify populations that need counseling the most.

13 **SEC. 9307. DEFAULT AND FORECLOSURE DATABASE.**

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

22 (b) CENSUS TRACT DATA.—Information in the data-
23 base shall be collected, aggregated, and made available on
24 a census tract basis.

1 (c) REQUIREMENTS.—Information collected and
2 made available through the database shall include—
3 (1) the number and percentage of such mort-
4 gage loans that are delinquent by more than 30
5 days;
6 (2) the number and percentage of such mort-
7 gage loans that are delinquent by more than 90
8 days;
9 (3) the number and percentage of such prop-
10 erties that are real estate-owned;
11 (4) number and percentage of such mortgage
12 loans that are in the foreclosure process;
13 (5) the number and percentage of such mort-
14 gage loans that have an outstanding principal obli-
15 gation amount that is greater than the value of the
16 property for which the loan was made; and
17 (6) such other information as the Secretary
18 considers appropriate.

19 **SEC. 9308. DEFINITIONS FOR COUNSELING-RELATED PRO-**
20 **GRAMS.**

21 Section 106 of the Housing and Urban Development
22 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-
23 ceding provisions of this subtitle, is further amended by
24 adding at the end the following new subsection:
25 "(h) DEFINITIONS.—For purposes of this section:

1 "(1) NONPROFIT ORGANIZATION.—The term
2 'nonprofit organization' has the meaning given such
3 term in section 104(5) of the Cranston-Gonzalez Na-
4 tional Affordable Housing Act (42 U.S.C.
5 12704(5)), except that subparagraph (D) of such
6 section shall not apply for purposes of this section.
7 "(2) STATE.—The term 'State' means each of
8 the several States, the Commonwealth of Puerto
9 Rico, the District of Columbia, the Commonwealth
10 of the Northern Mariana Islands, Guam, the Virgin
11 Islands, American Samoa, the Trust Territories of
12 the Pacific, or any other possession of the United
13 States.
14 "(3) UNIT OF GENERAL LOCAL GOVERN-
15 MENT.—The term 'unit of general local government'
16 means any city, county, parish, town, township, bor-
17 ough, village, or other general purpose political sub-
18 division of a State.
19 "(4) HUD-APPROVED COUNSELING AGENCY.—
20 The term 'HUD-approved counseling agency' means
21 a private or public nonprofit organization that is—
22 "(A) exempt from taxation under section
23 501(c) of the Internal Revenue Code of 1986;
24 and

1 "(B) certified by the Secretary to provide
2 housing counseling services.
3 "(5) STATE HOUSING FINANCE AGENCY.—The
4 term 'State housing finance agency' means any pub-
5 lic body, agency, or instrumentality specifically cre-
6 ated under State statute that is authorised to fi-
7 nance activities designed to provide housing and re-
8 lated facilities throughout an entire State through
9 land acquisition, construction, or rehabilitation.".

10 **SEC. 9309. ACCOUNTABILITY AND TRANSPARENCY FOR**
11 **GRANT RECIPIENTS.**

12 Section 106 of the Housing and Urban Development
13 Act of 1968 (12 U.S.C. 1701x), as amended by the pre-
14 ceding provisions of this subtitle, is further amended by
15 adding at the end the following:
16 "(i) ACCOUNTABILITY FOR RECIPIENTS OF COVERED
17 ASSISTANCE.—
18 "(1) TRACKING OF FUNDS.—The Secretary
19 shall—
20 "(A) develop and maintain a system to en-
21 sure that any organization or entity that re-
22 ceives any covered assistance uses all amounts
23 of covered assistance in accordance with this
24 section or section 9115 of the Mortgage Reform
25 and Anti-Predatory Lending Act, as applicable,

1 the regulations issued under this section or
2 such section 9115, as applicable, and any re-
3 quirements or conditions under which such
4 amounts were provided; and
5 "(B) require any organization or entity, as
6 a condition of receipt of any covered assistance,
7 to agree to comply with such requirements re-
8 garding covered assistance as the Secretary
9 shall establish, which shall include—
10 "(i) appropriate periodic financial and
11 grant activity reporting, record retention,
12 and audit requirements for the duration of
13 the covered assistance to the organization
14 or entity to ensure compliance with the
15 limitations and requirements of this section
16 or section 9115 of the Mortgage Reform
17 and Anti-Predatory Lending Act, as appli-
18 cable, the regulations under this section or
19 such section 9115, as applicable, and any
20 requirements or conditions under which
21 such amounts were provided; and
22 "(ii) any other requirements that the
23 Secretary determines are necessary to en-
24 sure appropriate administration and com-
25 pliance.

1 "(2) MISUSE OF FUNDS.—If any organization
2 or entity that receives any covered assistance is de-
3 termined by the Secretary to have used any covered
4 assistance in a manner that is materially in violation
5 of this section or section 9115 of the Mortgage Re-
6 form and Anti-Predatory Lending Act, as applicable,
7 the regulations issued under this section or such sec-
8 tion 9115, as applicable, or any requirements or con-
9 ditions under which such assistance was provided—
10 "(A) the Secretary shall require that, with-
11 in 12 months after the determination of such
12 misuse, the organization or entity shall reim-
13 burse the Secretary for such misused amounts
14 and return to the Secretary any such amounts
15 that remain unused or uncommitted for use;
16 and
17 "(B) such organization or entity shall be
18 ineligible, at any time after such determination,
19 to apply for or receive any further covered as-
20 sistance.
21 The remedies under this paragraph are in addition
22 to any other remedies that may be available under
23 law.
24 "(3) COVERED ASSISTANCE.—For purposes of
25 this subsection, the term 'covered assistance' means

1 any grant or other financial assistance provided
2 under—
3 "(A) this section; or
4 "(B) section 9115 of the Mortgage Reform
5 and Anti-Predatory Lending Act.".

6 **SEC. 9310. UPDATING AND SIMPLIFICATION OF MORTGAGE**
7 **INFORMATION BOOKLET.**

8 Section 5 of the Real Estate Settlement Procedures
9 Act of 1974 (12 U.S.C. 2604) is amended—
10 (1) in the section heading, by striking "SPE-
11 CIAL" and inserting "HOME BUYING";
12 (2) by striking subsections (a) and (b) and in-
13 serting the following new subsections:
14 "(a) PREPARATION AND DISTRIBUTION.—The Direc-
15 tor of the Consumer Financial Protection Agency (here-
16 after in this section referred to as the 'Director') shall pre-
17 pare, at least once every 5 years, a booklet to help con-
18 sumers applying for federally related mortgage loans to
19 understand the nature and costs of real estate settlement
20 services. The Director shall prepare the booklet in various
21 languages and cultural styles, as the Director determines
22 to be appropriate, so that the booklet is understandable
23 and accessible to homebuyers of different ethnic and cul-
24 tural backgrounds. The Director shall distribute such
25 booklets to all lenders that make federally related mort-

1 gage loans. The Director shall also distribute to such lend-
2 ers lists, organized by location, of homeownership coun-
3 selors certified under section 106(e) of the Housing and
4 Urban Development Act of 1968 (12 U.S.C. 1701x(e)) for
5 use in complying with the requirement under subsection
6 (c) of this section.

7 "(b) CONTENTS.—Each booklet shall be in such form
8 and detail as the Director shall prescribe and, in addition
9 to such other information as the Director may provide,
10 shall include in plain and understandable language the fol-
11 lowing information:

12 "(1) A description and explanation of the na-
13 ture and purpose of the costs incident to a real es-
14 tate settlement or a federally related mortgage loan.
15 The description and explanation shall provide gen-
16 eral information about the mortgage process as well
17 as specific information concerning, at a minimum—

18 "(A) balloon payments;

19 "(B) prepayment penalties;

20 "(C) the advantages of prepayment; and

21 "(D) the trade-off between closing costs
22 and the interest rate over the life of the loan.

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

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

7 "(4) A list and explanation of questions a con-
8 sumer obtaining a federally related mortgage loan
9 should ask regarding the loan, including whether the
10 consumer will have the ability to repay the loan,
11 whether the consumer sufficiently shopped for the
12 loan, whether the loan terms include prepayment
13 penalties or balloon payments, and whether the loan
14 will benefit the borrower.

15 "(5) An explanation of the right of rescission as
16 to certain transactions provided by sections 125 and
17 129 of the Truth in Lending Act.

18 "(6) A brief explanation of the nature of a vari-
19 able rate mortgage and a reference to the booklet
20 entitled 'Consumer Handbook on Adjustable Rate
21 Mortgages', published by the Director, or to any
22 suitable substitute of such booklet that the Director
23 may subsequently adopt pursuant to such section.

24 "(7) A brief explanation of the nature of a
25 home equity line of credit and a reference to the

1 pamphlet required to be provided under section
2 127A of the Truth in Lending Act.
3 "(8) Information about homeownership coun-
4 seling services made available pursuant to section
5 106(a)(4) of the Housing and Urban Development
6 Act of 1968 (12 U.S.C. 1701x(a)(4)), a rec-
7 ommendation that the consumer use such services,
8 and notification that a list of certified providers of
9 homeownership counseling in the area, and their
10 contact information, is available.
11 "(9) An explanation of the nature and purpose
12 of escrow accounts when used in connection with
13 loans secured by residential real estate and the re-
14 quirements under section 10 of this Act regarding
15 such accounts.
16 "(10) An explanation of the choices available to
17 buyers of residential real estate in selecting persons
18 to provide necessary services incidental to a real es-
19 tate settlement.
20 "(11) An explanation of a consumer's respon-
21 sibilities, liabilities, and obligations in a mortgage
22 transaction.
23 "(12) An explanation of the nature and purpose
24 of real estate appraisals, including the difference be-
25 tween an appraisal and a home inspection.

1 "(13) Notice that the Office of Housing of the
2 Department of Housing and Urban Development has
3 made publicly available a brochure regarding loan
4 fraud and a World Wide Web address and toll-free
5 telephone number for obtaining the brochure.
6 The booklet prepared pursuant to this section shall take
7 into consideration differences in real estate settlement pro-
8 cedures that may exist among the several States and terri-
9 tories of the United States and among separate political
10 subdivisions within the same State and territory.";
11 (3) in subsection (c), by inserting at the end
12 the following new sentence: "Each lender shall also
13 include with the booklet a reasonably complete or
14 updated list of homeownership counselors who are
15 certified pursuant to section 106(e) of the Housing
16 and Urban Development Act of 1968 (12 U.S.C.
17 1701x(e)) and located in the area of the lender.";
18 and
19 (4) in subsection (d), by inserting after the pe-
20 riod at the end of the first sentence the following:
21 "The lender shall provide the HUD-issued booklet in
22 the version that is most appropriate for the person
23 receiving it.".
24 **SEC. 9311. HOME INSPECTION COUNSELING.**
25 (a) PUBLIC OUTREACH.—

1 (1) IN GENERAL.—The Secretary of Housing
2 and Urban Development (in this section referred to
3 as the "Secretary") shall take such actions as may
4 be necessary to inform potential homebuyers of the
5 availability and importance of obtaining an inde-
6 pendent home inspection. Such actions shall in-
7 clude—
8 (A) publication of the HUD/FHA form
9 HUD 92564–CN entitled "For Your Protec-
10 tion: Get a Home Inspection", in both English
11 and Spanish languages;
12 (B) publication of the HUD/FHA booklet
13 entitled "For Your Protection: Get a Home In-
14 spection", in both English and Spanish lan-
15 guages;
16 (C) development and publication of a HUD
17 booklet entitled "For Your Protection—Get a
18 Home Inspection" that does not reference
19 FHA-insured homes, in both English and Span-
20 ish languages; and
21 (D) publication of the HUD document en-
22 titled "Ten Important Questions To Ask Your
23 Home Inspector", in both English and Spanish
24 languages.

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

11 (3) UPDATING.—The Secretary may periodi-
12 cally update and revise such materials, as the Sec-
13 retary determines to be appropriate.

14 (b) REQUIREMENT FOR FHA-APPROVED LEND-
15 ERS.—Each mortgagee approved for participation in the
16 mortgage insurance programs under title II of the Na-
17 tional Housing Act shall provide prospective homebuyers,
18 at first contact, whether upon pre-qualification, pre-ap-
19 proval, or initial application, the materials specified in
20 subparagraphs (A), (B), and (D) of subsection (a)(1).

21 (c) REQUIREMENTS FOR HUD-APPROVED COUN-
22 SELING AGENCIES.—Each counseling agency certified
23 pursuant by the Secretary to provide housing counseling
24 services shall provide each of their clients, as part of the

1 home purchase counseling process, the materials specified
2 in subparagraphs (C) and (D) of subsection (a)(1).
3 (d) TRAINING.—Training provided the Department
4 of Housing and Urban Development for housing coun-
5 seling agencies, whether such training is provided directly
6 by the Department or otherwise, shall include—
7 (1) providing information on counseling poten-
8 tial homebuyers of the availability and importance of
9 getting an independent home inspection;
10 (2) providing information about the home in-
11 spection process, including the reasons for specific
12 inspections such as radon and lead-based paint test-
13 ing;
14 (3) providing information about advising poten-
15 tial homebuyers on how to locate and select a quali-
16 fied home inspector; and
17 (4) review of home inspection public outreach
18 materials of the Department.

19 **SEC. 9312. WARNINGS TO HOMEOWNERS OF FORECLOSURE**
20 **RESCUE SCAMS.**

21 (a) ASSISTANCE TO NRC.—Notwithstanding any
22 other provision of law, of any amounts made available for
23 any fiscal year pursuant to section 106(a)(4)(F) of the
24 Housing and Urban Development Act of 1968 (12 U.S.C.
25 1701x(a)(4)(F)) (as added by section 9304 of this title),

1 10 percent shall be used only for assistance to the Neigh-
2 borhood Reinvestment Corporation for activities, in con-
3 sultation with servicers of residential mortgage loans, to
4 provide notice to borrowers under such loans who are de-
5 linquent with respect to payments due under such loans
6 that makes such borrowers aware of the dangers of fraud-
7 ulent activities associated with foreclosure.

8 (b) NOTICE.—The Neighborhood Reinvestment Cor-
9 poration, in consultation with servicers of residential mort-
10 gage loans, shall use the amounts provided pursuant to
11 subsection (a) to carry out activities to inform borrowers
12 under residential mortgage loans—

13 (1) that the foreclosure process is complex and
14 can be confusing;

15 (2) that the borrower may be approached dur-
16 ing the foreclosure process by persons regarding sav-
17 ing their home and they should use caution in any
18 such dealings;

19 (3) that there are Federal Government and
20 nonprofit agencies that may provide information
21 about the foreclosure process, including the Depart-
22 ment of Housing and Urban Development;

23 (4) that they should contact their lender imme-
24 diately, contact the Department of Housing and
25 Urban Development to find a housing counseling

1 agency certified by the Department to assist in
2 avoiding foreclosure, or visit the Department's
3 website regarding tips for avoiding foreclosure; and
4 (5) of the telephone number of the loan servicer
5 or successor, the telephone number of the Depart-
6 ment of Housing and Urban Development housing
7 counseling line, and the Uniform Resource Locators
8 (URLs) for the Department of Housing and Urban
9 Development websites for housing counseling and for
10 tips for avoiding foreclosure.

11 **Subtitle E—Mortgage Servicing**

12 **SEC. 9401. ESCROW AND IMPOUND ACCOUNTS RELATING**
13 **TO CERTAIN CONSUMER CREDIT TRANS-**
14 **ACTIONS.**

15 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
16 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
17 after section 129C (as added by section 9101) the fol-
18 lowing new section:

19 **"SEC. 129D. ESCROW OR IMPOUND ACCOUNTS RELATING**
20 **TO CERTAIN CONSUMER CREDIT TRANS-**
21 **ACTIONS.**

22 "(a) IN GENERAL.—Except as provided in subsection
23 (b), (c), or (d) , a creditor, in connection with the forma-
24 tion or consummation of a consumer credit transaction se-
25 cured by a first lien on the principal dwelling of the con-

1 sumer, other than a consumer credit transaction under an
2 open end credit plan or a reverse mortgage, shall establish,
3 before the consummation of such transaction, an escrow
4 or impound account for the payment of taxes and hazard
5 insurance, and, if applicable, flood insurance, mortgage in-
6 surance, ground rents, and any other required periodic
7 payments or premiums with respect to the property or the
8 loan terms, as provided in, and in accordance with, this
9 section.

10 "(b) WHEN REQUIRED.—No impound, trust, or other
11 type of account for the payment of property taxes, insur-
12 ance premiums, or other purposes relating to the property
13 may be required as a condition of a real property sale con-
14 tract or a loan secured by a first deed of trust or mortgage
15 on the principal dwelling of the consumer, other than a
16 consumer credit transaction under an open end credit plan
17 or a reverse mortgage, except when—

18 "(1) any such impound, trust, or other type of
19 escrow or impound account for such purposes is re-
20 quired by Federal or State law;

21 "(2) a loan is made, guaranteed, or insured by
22 a State or Federal governmental lending or insuring
23 agency;

24 "(3) the transaction is secured by a first mort-
25 gage or lien on the consumer's principal dwelling

1 having an original principal obligation amount
2 that—
3 "(A) does not exceed the amount of the
4 maximum limitation on the original principal
5 obligation of mortgage in effect for a residence
6 of the applicable size, as of the date such inter-
7 est rate set, pursuant to the sixth sentence of
8 section 305(a)(2) the Federal Home Loan
9 Mortgage Corporation Act (12 U.S.C.
10 1454(a)(2)), and the annual percentage rate
11 will exceed the average prime offer rate for a
12 comparable transaction by 1.5 or more percent-
13 age points; or
14 "(B) exceeds the amount of the maximum
15 limitation on the original principal obligation of
16 mortgage in effect for a residence of the appli-
17 cable size, as of the date such interest rate set,
18 pursuant to the sixth sentence of section
19 305(a)(2) the Federal Home Loan Mortgage
20 Corporation Act (12 U.S.C. 1454(a)(2)), and
21 the annual percentage rate will exceed the aver-
22 age prime offer rate for a comparable trans-
23 action by 2.5 or more percentage points; or
24 "(4) so required pursuant to regulation.

1 "(c) DURATION OF MANDATORY ESCROW OR IM-
2 POUND ACCOUNT.—An escrow or impound account estab-
3 lished pursuant to subsection (b), shall remain in existence
4 for a minimum period of 5 years, beginning with the date
5 of the consummation of the loan, and until such borrower
6 has sufficient equity in the dwelling securing the consumer
7 credit transaction so as to no longer be required to main-
8 tain private mortgage insurance, or such other period as
9 may be provided in regulations to address situations such
10 as borrower delinquency, unless the underlying mortgage
11 establishing the account is terminated.

12 "(d) LIMITED EXEMPTIONS FOR LOANS SECURED BY
13 SHARES IN A COOPERATIVE AND FOR CERTAIN CONDO-
14 MINIUM UNITS.—Escrow accounts need not be established
15 for loans secured by shares in a cooperative. Insurance
16 premiums need not be included in escrow accounts for
17 loans secured by condominium units, where the condo-
18 minium association has an obligation to the condominium
19 unit owners to maintain a master policy insuring condo-
20 minium units.

21 "(e) CLARIFICATION ON ESCROW ACCOUNTS FOR
22 LOANS NOT MEETING STATUTORY TEST.—For mort-
23 gages not covered by the requirements of subsection (b),
24 no provision of this section shall be construed as pre-
25 cluding the establishment of an impound, trust, or other

1 type of account for the payment of property taxes, insur-
2 ance premiums, or other purposes relating to the prop-
3 erty—

4 "(1) on terms mutually agreeable to the parties
5 to the loan;

6 "(2) at the discretion of the lender or servicer,
7 as provided by the contract between the lender or
8 servicer and the borrower; or

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

13 "(f) ADMINISTRATION OF MANDATORY ESCROW OR
14 IMPOUND ACCOUNTS.—

15 "(1) IN GENERAL.—Except as may otherwise
16 be provided for in this title or in regulations pre-
17 scribed by the Board, escrow or impound accounts
18 established pursuant to subsection (b) shall be estab-
19 lished in a federally insured depository institution.

20 "(2) ADMINISTRATION.—Except as provided in
21 this section or regulations prescribed under this sec-
22 tion, an escrow or impound account subject to this
23 section shall be administered in accordance with—

1 "(A) the Real Estate Settlement Proce-
2 dures Act of 1974 and regulations prescribed
3 under such Act;
4 "(B) the Flood Disaster Protection Act of
5 1973 and regulations prescribed under such
6 Act; and
7 "(C) the law of the State, if applicable,
8 where the real property securing the consumer
9 credit transaction is located.
10 "(3) APPLICABILITY OF PAYMENT OF INTER-
11 EST.—If prescribed by applicable State or Federal
12 law, each creditor shall pay interest to the consumer
13 on the amount held in any impound, trust, or escrow
14 account that is subject to this section in the manner
15 as prescribed by that applicable State or Federal
16 law.
17 "(4) PENALTY COORDINATION WITH RESPA.—
18 Any action or omission on the part of any person
19 which constitutes a violation of the Real Estate Set-
20 tlement Procedures Act of 1974 or any regulation
21 prescribed under such Act for which the person has
22 paid any fine, civil money penalty, or other damages
23 shall not give rise to any additional fine, civil money
24 penalty, or other damages under this section, unless

1 the action or omission also constitutes a direct viola-
2 tion of this section.
3 "(g) DISCLOSURES RELATING TO MANDATORY ES-
4 CROW OR IMPOUND ACCOUNT.—In the case of any im-
5 pound, trust, or escrow account that is subject to this sec-
6 tion, the creditor shall disclose by written notice to the
7 consumer at least 3 business days before the consumma-
8 tion of the consumer credit transaction giving rise to such
9 account or in accordance with timeframes established in
10 prescribed regulations the following information:
11 "(1) The fact that an escrow or impound ac-
12 count will be established at consummation of the
13 transaction.
14 "(2) The amount required at closing to initially
15 fund the escrow or impound account.
16 "(3) The amount, in the initial year after the
17 consummation of the transaction, of the estimated
18 taxes and hazard insurance, including flood insur-
19 ance, if applicable, and any other required periodic
20 payments or premiums that reflects, as appropriate,
21 either the taxable assessed value of the real property
22 securing the transaction, including the value of any
23 improvements on the property or to be constructed
24 on the property (whether or not such construction

1 will be financed from the proceeds of the trans-
2 action) or the replacement costs of the property.
3 "(4) The estimated monthly amount payable to
4 be escrowed for taxes, hazard insurance (including
5 flood insurance, if applicable) and any other re-
6 quired periodic payments or premiums.
7 "(5) The fact that, if the consumer chooses to
8 terminate the account at the appropriate time in the
9 future, the consumer will become responsible for the
10 payment of all taxes, hazard insurance, and flood in-
11 surance, if applicable, as well as any other required
12 periodic payments or premiums on the property un-
13 less a new escrow or impound account is established.
14 "(6) Such other information as the Federal
15 banking agencies jointly determine necessary for the
16 protection of the consumer.
17 "(h) DEFINITIONS.—For purposes of this section, the
18 following definitions shall apply:
19 "(1) FLOOD INSURANCE.—The term 'flood in-
20 surance' means flood insurance coverage provided
21 under the national flood insurance program pursu-
22 ant to the National Flood Insurance Act of 1968.
23 "(2) HAZARD INSURANCE.—The term 'hazard
24 insurance' shall have the same meaning as provided
25 for 'hazard insurance', 'casualty insurance', 'home-

1 owner's insurance', or other similar term under the
2 law of the State where the real property securing the
3 consumer credit transaction is located.".
4 (b) IMPLEMENTATION.—
5 (1) REGULATIONS.—The Board of Governors of
6 the Federal Reserve System, the Comptroller of the
7 Currency, the Director of the Office of Thrift Super-
8 vision, the Federal Deposit Insurance Corporation,
9 the National Credit Union Administration Board,
10 (hereafter in this title referred to as the "Federal
11 banking agencies") and the Federal Trade Commis-
12 sion shall prescribe, in final form, such regulations
13 as determined to be necessary to implement the
14 amendments made by subsection (a) before the end
15 of the 180-day period beginning on the date of the
16 enactment of this Act.
17 (2) EFFECTIVE DATE.—The amendments made
18 by subsection (a) shall only apply to covered mort-
19 gage loans consummated after the end of the 1-year
20 period beginning on the date of the publication of
21 final regulations in the Federal Register.
22 (c) CLERICAL AMENDMENT.—The table of sections
23 for chapter 2 of the Truth in Lending Act is amended
24 by inserting after the item relating to section 129C (as
25 added by section 9101) the following new item:

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

1 **SEC. 9402. DISCLOSURE NOTICE REQUIRED FOR CON-**
2 **SUMERS WHO WAIVE ESCROW SERVICES.**

3 (a) IN GENERAL.—Section 129D of the Truth in
4 Lending Act (as added by section 9401) is amended by
5 adding at the end the following new subsection:

6 "(i) DISCLOSURE NOTICE REQUIRED FOR CON-
7 SUMERS WHO WAIVE ESCROW SERVICES.—

8 "(1) IN GENERAL.—If—

9 "(A) an impound, trust, or other type of
10 account for the payment of property taxes, in-
11 surance premiums, or other purposes relating to
12 real property securing a consumer credit trans-
13 action is not established in connection with the
14 transaction; or

15 "(B) a consumer chooses, and provides
16 written notice to the creditor or servicer of such
17 choice, at any time after such an account is es-
18 tablished in connection with any such trans-
19 action and in accordance with any statute, reg-
20 ulation, or contractual agreement, to close such
21 account,

22 the creditor or servicer shall provide a timely and
23 clearly written disclosure to the consumer that ad-
24 vises the consumer of the responsibilities of the con-

1 sumer and implications for the consumer in the ab-
2 sence of any such account.
3 "(2) DISCLOSURE REQUIREMENTS.—Any dis-
4 closure provided to a consumer under paragraph (1)
5 shall include the following:
6 "(A) Information concerning any applica-
7 ble fees or costs associated with either the non-
8 establishment of any such account at the time
9 of the transaction, or any subsequent closure of
10 any such account.
11 "(B) A clear and prominent notice that the
12 consumer is responsible for personally and di-
13 rectly paying the non-escrowed items, in addi-
14 tion to paying the mortgage loan payment, in
15 the absence of any such account, and the fact
16 that the costs for taxes, insurance, and related
17 fees can be substantial.
18 "(C) A clear explanation of the con-
19 sequences of any failure to pay non-escrowed
20 items, including the possible requirement for
21 the forced placement of insurance by the cred-
22 itor or servicer and the potentially higher cost
23 (including any potential commission payments
24 to the servicer) or reduced coverage for the con-

1 sumer in the event of any such creditor-placed
2 insurance.
3 "(D) Such other information as the Fed-
4 eral banking agencies jointly determine nec-
5 essary for the protection of the consumer.".
6 (b) IMPLEMENTATION.—
7 (1) REGULATIONS.—The Federal banking agen-
8 cies and the Federal Trade Commission shall pre-
9 scribe, in final form, such regulations as such agen-
10 cies determine to be necessary to implement the
11 amendments made by subsection (a) before the end
12 of the 180-day period beginning on the date of the
13 enactment of this Act.
14 (2) EFFECTIVE DATE.—The amendments made
15 by subsection (a) shall only apply in accordance with
16 the regulations established in paragraph (1) and be-
17 ginning on the date occurring 180-days after the
18 date of the publication of final regulations in the
19 Federal Register.

20 **SEC. 9403. REAL ESTATE SETTLEMENT PROCEDURES ACT**
21 **OF 1974 AMENDMENTS.**

22 (a) SERVICER PROHIBITIONS.—Section 6 of the Real
23 Estate Settlement Procedures Act of 1974 (12 U.S.C.
24 2605) is amended by adding at the end the following new
25 subsections:

1 "(k) SERVICER PROHIBITIONS.—

2 "(1) IN GENERAL.—A servicer of a federally re-
3 lated mortgage shall not—

4 "(A) obtain force-placed hazard insurance
5 unless there is a reasonable basis to believe the
6 borrower has failed to comply with the loan
7 contract's requirements to maintain property
8 insurance;

9 "(B) charge fees for responding to valid
10 qualified written requests (as defined in regula-
11 tions which the Secretary shall prescribe) under
12 this section;

13 "(C) fail to take timely action to respond
14 to a borrower's requests to correct errors relat-
15 ing to allocation of payments, final balances for
16 purposes of paying off the loan, or avoiding
17 foreclosure, or other standard servicer's duties;

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

23 "(E) fail to comply with any other obliga-
24 tion found by the Secretary, by regulation, to

1 be appropriate to carry out the consumer pro-
2 tection purposes of this Act.
3 "(2) FORCE-PLACED INSURANCE DEFINED.—
4 For purposes of this subsection and subsections (l)
5 and (m), the term 'force-placed insurance' means
6 hazard insurance coverage obtained by a servicer of
7 a federally related mortgage when the borrower has
8 failed to maintain or renew hazard insurance on
9 such property as required of the borrower under the
10 terms of the mortgage.
11 "(l) REQUIREMENTS FOR FORCE-PLACED INSUR-
12 ANCE.—A servicer of a federally related mortgage shall
13 not be construed as having a reasonable basis for obtain-
14 ing force-placed insurance unless the requirements of this
15 subsection have been met.
16 "(1) WRITTEN NOTICES TO BORROWER.—A
17 servicer may not impose any charge on any borrower
18 for force-placed insurance with respect to any prop-
19 erty securing a federally related mortgage unless—
20 "(A) the servicer has sent, by first-class
21 mail, a written notice to the borrower con-
22 taining—
23 "(i) a reminder of the borrower's obli-
24 gation to maintain hazard insurance on the

1 property securing the federally related
2 mortgage;
3 "(ii) a statement that the servicer
4 does not have evidence of insurance cov-
5 erage of such property;
6 "(iii) a clear and conspicuous state-
7 ment of the procedures by which the bor-
8 rower may demonstrate that the borrower
9 already has insurance coverage; and
10 "(iv) a statement that the servicer
11 may obtain such coverage at the borrower's
12 expense if the borrower does not provide
13 such demonstration of the borrower's exist-
14 ing coverage in a timely manner;
15 "(B) the servicer has sent, by first-class
16 mail, a second written notice, at least 30 days
17 after the mailing of the notice under subpara-
18 graph (A) that contains all the information de-
19 scribed in each clause of such subparagraph;
20 and
21 "(C) the servicer has not received from the
22 borrower any demonstration of hazard insur-
23 ance coverage for the property securing the
24 mortgage by the end of the 15-day period be-

1 ginning on the date the notice under subpara-
2 graph (B) was sent by the servicer.
3 "(2) SUFFICIENCY OF DEMONSTRATION.—A
4 servicer of a federally related mortgage shall accept
5 any reasonable form of written confirmation from a
6 borrower of existing insurance coverage, which shall
7 include the existing insurance policy number along
8 with the identity of, and contact information for, the
9 insurance company or agent.
10 "(3) TERMINATION OF FORCE-PLACED INSUR-
11 ANCE.—Within 15 days of the receipt by a servicer
12 of confirmation of a borrower's existing insurance
13 coverage, the servicer shall—
14 "(A) terminate the force-placed insurance;
15 and
16 "(B) refund to the consumer all force-
17 placed insurance premiums paid by the bor-
18 rower during any period during which the bor-
19 rower's insurance coverage and the force-placed
20 insurance coverage were each in effect, and any
21 related fees charged to the consumer's account
22 with respect to the force-placed insurance dur-
23 ing such period.
24 "(4) CLARIFICATION WITH RESPECT TO FLOOD
25 DISASTER PROTECTION ACT.—No provision of this

1 section shall be construed as prohibiting a servicer
2 from providing simultaneous or concurrent notice of
3 a lack of flood insurance pursuant to section 102(e)
4 of the Flood Disaster Protection Act of 1973.
5 "(m) LIMITATIONS ON FORCE-PLACED INSURANCE
6 CHARGES.—All charges for force-placed insurance pre-
7 miums shall be bona fide and reasonable in amount.".
8 (b) INCREASE IN PENALTY AMOUNTS.—Section 6(f)
9 of the Real Estate Settlement Procedures Act of 1974 (12
10 U.S.C. 2605(f)) is amended—
11 (1) in paragraphs (1)(B) and (2)(B), by strik-
12 ing "$1,000" each place such term appears and in-
13 serting "$2,000"; and
14 (2) in paragraph (2)(B)(i), by striking
15 "$500,000" and inserting "$1,000,000".
16 (c) DECREASE IN RESPONSE TIMES.—Section 6(e) of
17 the Real Estate Settlement Procedures Act of 1974 (12
18 U.S.C. 2605(e)) is amended—
19 (1) in paragraph (1)(A), by striking "20 days"
20 and inserting "5 days";
21 (2) in paragraph (2), by striking "60 days" and
22 inserting "30 days"; and
23 (3) by adding at the end the following new
24 paragraph:

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

7 (d) PROMPT REFUND OF ESCROW ACCOUNTS UPON
8 PAYOFF.—Section 6(g) of the Real Estate Settlement
9 Procedures Act of 1974 (12 U.S.C. 2605(g)) is amended
10 by adding at the end the following new sentence: "Any
11 balance in any such account that is within the servicer's
12 control at the time the loan is paid off shall be promptly
13 returned to the borrower within 20 business days or cred-
14 ited to a similar account for a new mortgage loan to the
15 borrower with the same lender.".

16 **SEC. 9404. TRUTH IN LENDING ACT AMENDMENTS.**

17 (a) REQUIREMENTS FOR PROMPT CREDITING OF
18 HOME LOAN PAYMENTS.—Chapter 2 of the Truth in
19 Lending Act (15 U.S.C. 1631 et seq.) is amended by in-
20 serting after section 129E (as added by section 9502) the
21 following new section (and by amending the table of con-
22 tents accordingly):

1 **"SEC. 129F. REQUIREMENTS FOR PROMPT CREDITING OF**
2 **HOME LOAN PAYMENTS.**

3 "(a) IN GENERAL.—In connection with a consumer
4 credit transaction secured by a consumer's principal dwell-
5 ing, no servicer shall fail to credit a payment to the con-
6 sumer's loan account as of the date of receipt, except when
7 a delay in crediting does not result in any charge to the
8 consumer or in the reporting of negative information to
9 a consumer reporting agency, except as required in sub-
10 section (b).

11 "(b) EXCEPTION.—If a servicer specifies in writing
12 requirements for the consumer to follow in making pay-
13 ments, but accepts a payment that does not conform to
14 the requirements, the servicer shall credit the payment as
15 of 5 days after receipt.".

16 (b) REQUESTS FOR PAYOFF AMOUNTS.—Chapter 2
17 of such Act is further amended by inserting after section
18 129F (as added by subsection (a)) the following new sec-
19 tion (and by amending the table of contents accordingly):

20 **"SEC. 129G. REQUESTS FOR PAYOFF AMOUNTS OF HOME**
21 **LOAN.**

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

1 **SEC. 9405. ESCROWS INCLUDED IN REPAYMENT ANALYSIS.**

2 Section 128(b) of the Truth in Lending Act (15
3 U.S.C. 1638(b)) is amended by adding at the end the fol-
4 lowing new paragraph:

5 "(4) REPAYMENT ANALYSIS REQUIRED TO IN-
6 CLUDE ESCROW PAYMENTS.—

7 "(A) IN GENERAL.—In the case of any
8 consumer credit transaction secured by a first
9 mortgage or lien on the principal dwelling of
10 the consumer, other than a consumer credit
11 transaction under an open end credit plan or a
12 reverse mortgage, for which an impound, trust,
13 or other type of account has been or will be es-
14 tablished in connection with the transaction for
15 the payment of property taxes, hazard and flood
16 (if any) insurance premiums, or other periodic
17 payments or premiums with respect to the
18 property, the information required to be pro-
19 vided under subsection (a) with respect to the
20 number, amount, and due dates or period of
21 payments scheduled to repay the total of pay-
22 ments shall take into account the amount of
23 any monthly payment to such account for each
24 such repayment in accordance with section
25 10(a)(2) of the Real Estate Settlement Proce-
26 dures Act of 1974.

1 "(B) ASSESSMENT VALUE.—The amount
2 taken into account under subparagraph (A) for
3 the payment of property taxes, hazard and flood
4 (if any) insurance premiums, or other periodic
5 payments or premiums with respect to the
6 property shall reflect the taxable assessed value
7 of the real property securing the transaction
8 after the consummation of the transaction, in-
9 cluding the value of any improvements on the
10 property or to be constructed on the property
11 (whether or not such construction will be fi-
12 nanced from the proceeds of the transaction), if
13 known, and the replacement costs of the prop-
14 erty for hazard insurance, in the initial year
15 after the transaction.".

16 **Subtitle F—Appraisal Activities**

17 **SEC. 9501. PROPERTY APPRAISAL REQUIREMENTS.**

18 Chapter 2 of the Truth in Lending Act (15 U.S.C.
19 1631 et seq.) is amended by inserting after 129G (as
20 added by section 9404(b)) the following new section:

21 **"SEC. 129H PROPERTY APPRAISAL REQUIREMENTS.**

22 "(a) IN GENERAL.—A creditor may not extend credit
23 in the form of a subprime mortgage to any consumer with-
24 out first obtaining a written appraisal of the property to

1 be mortgaged prepared in accordance with the require-
2 ments of this section.
3 "(b) APPRAISAL REQUIREMENTS.—
4 "(1) PHYSICAL PROPERTY VISIT.—An appraisal
5 of property to be secured by a subprime mortgage
6 does not meet the requirement of this section unless
7 it is performed by a qualified appraiser who con-
8 ducts a physical property visit of the interior of the
9 mortgaged property.
10 "(2) SECOND APPRAISAL UNDER CERTAIN CIR-
11 CUMSTANCES.—
12 "(A) IN GENERAL.—If the purpose of a
13 subprime mortgage is to finance the purchase
14 or acquisition of the mortgaged property from
15 a person within 180 days of the purchase or ac-
16 quisition of such property by that person at a
17 price that was lower than the current sale price
18 of the property, the creditor shall obtain a sec-
19 ond appraisal from a different qualified ap-
20 praiser. The second appraisal shall include an
21 analysis of the difference in sale prices, changes
22 in market conditions, and any improvements
23 made to the property between the date of the
24 previous sale and the current sale.

1 "(B) NO COST TO APPLICANT.—The cost
2 of any second appraisal required under sub-
3 paragraph (A) may not be charged to the appli-
4 cant.
5 "(3) QUALIFIED APPRAISER DEFINED.—For
6 purposes of this section, the term 'qualified ap-
7 praiser' means a person who—
8 "(A) is, at a minimum, certified or licensed
9 by the State in which the property to be ap-
10 praised is located; and
11 "(B) performs each appraisal in con-
12 formity with the Uniform Standards of Profes-
13 sional Appraisal Practice and title XI of the Fi-
14 nancial Institutions Reform, Recovery, and En-
15 forcement Act of 1989, and the regulations pre-
16 scribed under such title, as in effect on the date
17 of the appraisal.
18 "(c) FREE COPY OF APPRAISAL.—A creditor shall
19 provide 1 copy of each appraisal conducted in accordance
20 with this section in connection with a subprime mortgage
21 to the applicant without charge, and at least 3 days prior
22 to the transaction closing date.
23 "(d) CONSUMER NOTIFICATION.—At the time of the
24 initial mortgage application, the applicant shall be pro-
25 vided with a statement by the creditor that any appraisal

1 prepared for the mortgage is for the sole use of the cred-
2 itor, and that the applicant may choose to have a separate
3 appraisal conducted at their own expense.

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

9 "(f) SUBPRIME MORTGAGE DEFINED.—For purposes
10 of this section, the term 'subprime mortgage' means a res-
11 idential mortgage loan secured by a principal dwelling with
12 an annual percentage rate that exceeds the average prime
13 offer rate for a comparable transaction, as of the date the
14 interest rate is set—

15 "(1) by 1.5 or more percentage points, in the
16 case of a first lien residential mortgage loan having
17 an original principal obligation amount that does not
18 exceed the amount of the maximum limitation on the
19 original principal obligation of mortgage in effect for
20 a residence of the applicable size, as of the date of
21 such interest rate set, pursuant to the sixth sentence
22 of section 305(a)(2) the Federal Home Loan Mort-
23 gage Corporation Act (12 U.S.C. 1454(a)(2));

24 "(2) by 2.5 or more percentage points, in the
25 case of a first lien residential mortgage loan having

1 an original principal obligation amount that exceeds
2 the amount of the maximum limitation on the origi-
3 nal principal obligation of mortgage in effect for a
4 residence of the applicable size, as of the date of
5 such interest rate set, pursuant to the sixth sentence
6 of section 305(a)(2) the Federal Home Loan Mort-
7 gage Corporation Act (12 U.S.C. 1454(a)(2)); and
8 "(3) by 3.5 or more percentage points for a
9 subordinate lien residential mortgage loan.".

10 **SEC. 9502. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**
11 **RELATING TO CERTAIN CONSUMER CREDIT**
12 **TRANSACTIONS.**

13 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
14 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
15 after section 129D (as added by section 9401(a)) the fol-
16 lowing new section:

17 **"SEC. 129E. UNFAIR AND DECEPTIVE PRACTICES AND ACTS**
18 **RELATING TO CERTAIN CONSUMER CREDIT**
19 **TRANSACTIONS.**

20 "(a) IN GENERAL.—It shall be unlawful, in extending
21 credit or in providing any services for a consumer credit
22 transaction secured by the principal dwelling of the con-
23 sumer, to engage in any unfair or deceptive act or practice
24 as described in or pursuant to regulations prescribed
25 under this section.

1 "(b) APPRAISAL INDEPENDENCE.—For purposes of
2 subsection (a), unfair and deceptive practices shall in-
3 clude—
4 "(1) any appraisal of a property offered as se-
5 curity for repayment of the consumer credit trans-
6 action that is conducted in connection with such
7 transaction in which a person with an interest in the
8 underlying transaction compensates, coerces, extorts,
9 colludes, instructs, induces, bribes, or intimidates a
10 person conducting or involved in an appraisal, or at-
11 tempts, to compensate, coerce, extort, collude, in-
12 struct, induce, bribe, or intimidate such a person,
13 for the purpose of causing the appraised value as-
14 signed, under the appraisal, to the property to be
15 based on any factor other than the independent
16 judgment of the appraiser;
17 "(2) mischaracterizing, or suborning any
18 mischaracterization of, the appraised value of the
19 property securing the extension of the credit;
20 "(3) seeking to influence an appraiser or other-
21 wise to encourage a targeted value in order to facili-
22 tate the making or pricing of the transaction; and
23 "(4) withholding or threatening to withhold
24 timely payment for an appraisal report or for ap-
25 praisal services rendered.

1 "(c) EXCEPTIONS.—The requirements of subsection
2 (b) shall not be construed as prohibiting a mortgage lend-
3 er, mortgage broker, mortgage banker, real estate broker,
4 appraisal management company, employee of an appraisal
5 management company, consumer, or any other person
6 with an interest in a real estate transaction from asking
7 an appraiser to provide 1 or more of the following services:
8 "(1) Consider additional, appropriate property
9 information, including the consideration of addi-
10 tional comparable properties to make or support an
11 appraisal.
12 "(2) Provide further detail, substantiation, or
13 explanation for the appraiser's value conclusion.
14 "(3) Correct errors in the appraisal report.
15 "(d) PROHIBITIONS ON CONFLICTS OF INTEREST.—
16 No certified or licensed appraiser conducting, and no ap-
17 praisal management company procuring or facilitating, an
18 appraisal in connection with a consumer credit transaction
19 secured by the principal dwelling of a consumer may have
20 a direct or indirect interest, financial or otherwise, in the
21 property or transaction involving the appraisal.
22 "(e) MANDATORY REPORTING.—Any mortgage lend-
23 er, mortgage broker, mortgage banker, real estate broker,
24 appraisal management company, employee of an appraisal
25 management company, or any other person involved in a

1 real estate transaction involving an appraisal in connection
2 with a consumer credit transaction secured by the prin-
3 cipal dwelling of a consumer who has a reasonable basis
4 to believe an appraiser is failing to comply with the Uni-
5 form Standards of Professional Appraisal Practice, is vio-
6 lating applicable laws, or is otherwise engaging in uneth-
7 ical or unprofessional conduct, shall refer the matter to
8 the applicable State appraiser certifying and licensing
9 agency.

10 "(f) NO EXTENSION OF CREDIT.—In connection with
11 a consumer credit transaction secured by a consumer's
12 principal dwelling, a creditor who knows, at or before loan
13 consummation, of a violation of the appraisal independ-
14 ence standards established in subsections (b) or (d) shall
15 not extend credit based on such appraisal unless the cred-
16 itor documents that the creditor has acted with reasonable
17 diligence to determine that the appraisal does not materi-
18 ally misstate or misrepresent the value of such dwelling.

19 "(g) RULEMAKING PROCEEDINGS.—The Board, the
20 Comptroller of the Currency, the Director of the Office
21 of Thrift Supervision, the Federal Deposit Insurance Cor-
22 poration, the National Credit Union Administration
23 Board, and the Federal Trade Commission—

24 "(1) shall, for purposes of this section, jointly
25 prescribe regulations no later than 180 days after

1 the date of the enactment of this section, and where
2 such regulations have an effective date of no later
3 than 1 year after the date of the enactment of this
4 section, defining with specificity acts or practices
5 which are unfair or deceptive in the provision of
6 mortgage lending services for a consumer credit
7 transaction secured by the principal dwelling of the
8 consumer or mortgage brokerage services for such a
9 transaction and defining any terms in this section or
10 such regulations; and

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

19 "(h) PENALTIES.—

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

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

"(3) ASSESSMENT.—The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.".

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129D (as added by section 9401(c)) the following new item:

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

SEC. 9503. AMENDMENTS RELATING TO APPRAISAL SUBCOMMITTEE OF FIEC, APPRAISER INDEPENDENCE MONITORING, APPROVED APPRAISER EDUCATION, APPRAISAL MANAGEMENT COMPANIES, APPRAISER COMPLAINT HOTLINE, AUTOMATED VALUATION MODELS, AND BROKER PRICE OPINIONS.

(a) CONSUMER PROTECTION MISSION.—

(1) PURPOSES.—Section 1101 of the Financial Institutions Reform, Recovery, and Enforcement Act

1 of 1989 (12 U.S.C. 3331) is amended by inserting
2 "and to provide the Appraisal Subcommittee with a
3 consumer protection mandate" before the period at
4 the end.

5 (2) FUNCTIONS OF APPRAISAL SUB-
6 COMMITTEE.—Section 1103(a) of the Financial In-
7 stitutions Reform, Recovery, and Enforcement Act
8 of 1989 (12 U.S.C. 3332(a)) is amended—

9 (A) by striking "and" at the end of para-
10 graph (3); and

11 (B) by amending paragraph (4) to read as
12 follows:

13 "(4) monitor the efforts of, and requirements
14 established by, States and the Federal financial in-
15 stitutions regulatory agencies to protect consumers
16 from improper appraisal practices and the preda-
17 tions of unlicensed appraisers in consumer credit
18 transactions that are secured by a consumer's prin-
19 cipal dwelling; and".

20 (3) THRESHOLD LEVELS.—Section 1112(b) of
21 the Financial Institutions Reform, Recovery, and
22 Enforcement Act of 1989 (12 U.S.C. 3341(b)) is
23 amended by inserting before the period the fol-
24 lowing: ", and that such threshold level provides rea-
25 sonable protection for consumers who purchase 1–4

1 unit single-family residences. In determining whether
2 a threshold level provides reasonable protection for
3 consumers, each Federal financial institutions regu-
4 latory agency shall consult with consumer groups
5 and convene a public hearing".

6 (b) ANNUAL REPORT OF APPRAISAL SUB-
7 COMMITTEE.—Section 1103(a) of the Financial Institu-
8 tions Reform, Recovery, and Enforcement Act of 1989 (12
9 U.S.C. 3332(a)) is amended at the end by inserting the
10 following new paragraph:

11 "(5) transmit an annual report to the Congress
12 not later than January 31 of each year that de-
13 scribes the manner in which each function assigned
14 to the Appraisal Subcommittee has been carried out
15 during the preceding year. The report shall also de-
16 tail the activities of the Appraisal Subcommittee, in-
17 cluding the results of all audits of State appraiser
18 regulatory agencies, and provide an accounting of
19 disapproved actions and warnings taken in the pre-
20 vious year, including a description of the conditions
21 causing the disapproval and actions taken to achieve
22 compliance.".

23 (c) OPEN MEETINGS.—Section 1104(b) of the Finan-
24 cial Institutions Reform, Recovery, and Enforcement Act
25 of 1989 (12 U.S.C. 3333(b)) is amended by inserting "in

1 public session after notice in the Federal Register'' after
2 ''shall meet''.
3 (d) REGULATIONS.—Section 1106 of the Financial
4 Institutions Reform, Recovery, and Enforcement Act of
5 1989 (12 U.S.C. 3335) is amended—
6 (1) by inserting ''prescribe regulations after no-
7 tice and opportunity for comment,'' after ''hold
8 hearings''; and
9 (2) at the end by inserting ''Any regulations
10 prescribed by the Appraisal Subcommittee shall (un-
11 less otherwise provided in this title) be limited to the
12 following functions: temporary practice, national reg-
13 istry, information sharing, and enforcement. For
14 purposes of prescribing regulations, the Appraisal
15 Subcommittee shall establish an advisory committee
16 of industry participants, including appraisers, lend-
17 ers, consumer advocates, and government agencies,
18 and hold meetings as necessary to support the devel-
19 opment of regulations.''.
20 (e) APPRAISALS AND APPRAISAL REVIEWS.—Section
21 1113 of the Financial Institutions Reform, Recovery, and
22 Enforcement Act of 1989 (12 U.S.C. 3342) is amended—
23 (1) by striking ''In determining'' and inserting
24 ''(a) IN GENERAL.—In determining'';

1 (2) in subsection (a) (as designated by para-
2 graph (1)), by inserting before the period the fol-
3 lowing: ", where a complex 1-to-4 unit single family
4 residential appraisal means an appraisal for which
5 the property to be appraised, the form of ownership,
6 the property characteristics, or the market condi-
7 tions are atypical"; and
8 (3) by adding at the end the following new sub-
9 section:
10 "(b) APPRAISALS AND APPRAISAL REVIEWS.—All ap-
11 praisals performed at a property within a State shall be
12 prepared by appraisers licensed or certified in the State
13 where the property is located. All appraisal reviews, in-
14 cluding appraisal reviews by a lender, appraisal manage-
15 ment company, or other third party organization, shall be
16 performed by an appraiser who is duly licensed or certified
17 by a State appraisal board.".
18 (f) APPRAISAL MANAGEMENT SERVICES.—
19 (1) SUPERVISION OF THIRD PARTY PROVIDERS
20 OF APPRAISAL MANAGEMENT SERVICES.—Section
21 1103(a) of the Financial Institutions Reform, Recov-
22 ery, and Enforcement Act of 1989 (12 U.S.C.
23 3332(a)) (as previously amended by this section) is
24 further amended—

1 (A) by amending paragraph (1) to read as
2 follows:
3 "(1) monitor the requirements established by
4 States—
5 "(A) for the certification and licensing of
6 individuals who are qualified to perform ap-
7 praisals in connection with federally related
8 transactions, including a code of professional
9 responsibility; and
10 "(B) for the registration and supervision
11 of the operations and activities of an appraisal
12 management company;"; and
13 (B) by adding at the end the following new
14 paragraph:
15 "(7) maintain a national registry of appraisal
16 management companies that either are registered
17 with and subject to supervision of a State appraiser
18 certifying and licensing agency or are operating sub-
19 sidiaries of a Federally regulated financial institu-
20 tion.".
21 (2) APPRAISAL MANAGEMENT COMPANY MIN-
22 IMUM QUALIFICATIONS.—Title XI of the Financial
23 Institutions Reform, Recovery, and Enforcement Act
24 of 1989 (12 U.S.C. 3331 et seq.) is amended by

1 adding at the end the following new section (and
2 amending the table of contents accordingly):

3 **"SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM**
4 **QUALIFICATIONS.**

5 "(a) IN GENERAL.—The Appraiser Qualifications
6 Board of the Appraisal Foundation shall establish min-
7 imum qualifications to be applied by a State in the reg-
8 istration of appraisal management companies. Such quali-
9 fications shall include a requirement that such compa-
10 nies—

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

14 "(2) verify that only licensed or certified ap-
15 praisers are used for federally related transactions;

16 "(3) require that appraisals coordinated by an
17 appraisal management company comply with the
18 Uniform Standards of Professional Appraisal Prac-
19 tice; and

20 "(4) require that appraisals are conducted inde-
21 pendently and free from inappropriate influence and
22 coercion pursuant to the appraisal independence
23 standards established under section 129E of the
24 Truth in Lending Act.

1 "(b) EXCEPTION FOR FEDERALLY REGULATED FI-
2 NANCIAL INSTITUTIONS.—The requirements of subsection
3 (a) shall not apply to an appraisal management company
4 that is a subsidiary owned and controlled by a financial
5 institution and regulated by a federal financial institution
6 regulatory agency. In such case, the appropriate federal
7 financial institutions regulatory agency shall, at a min-
8 imum, develop regulations affecting the operations of the
9 appraisal management company to—
10 "(1) verify that only licensed or certified ap-
11 praisers are used for federally related transactions;
12 "(2) require that appraisals coordinated by an
13 institution or subsidiary providing appraisal manage-
14 ment services comply with the Uniform Standards of
15 Professional Appraisal Practice; and
16 "(3) require that appraisals are conducted inde-
17 pendently and free from inappropriate influence and
18 coercion pursuant to the appraisal independence
19 standards established under section 129E of the
20 Truth in Lending Act.
21 "(c) REGISTRATION LIMITATIONS.—An appraisal
22 management company shall not be registered by a State
23 if such company, in whole or in part, directly or indirectly,
24 is owned by any person who has had an appraiser license
25 or certificate refused, denied, cancelled, surrendered in

1 lieu of revocation, or revoked in any State. Additionally,
2 each person that owns more than 10 percent of an ap-
3 praisal management company shall be of good moral char-
4 acter, as determined by the State appraiser certifying and
5 licensing agency, and shall submit to a background inves-
6 tigation carried out by the State appraiser certifying and
7 licensing agency.

8 "(d) REGULATIONS.—The Appraisal Subcommittee
9 shall promulgate regulations to implement the minimum
10 qualifications developed by the Appraiser Qualifications
11 Board under this section, as such qualifications relate to
12 the State appraiser certifying and licensing agencies. The
13 Appraisal Subcommittee shall also promulgate regulations
14 for the reporting of the activities of appraisal management
15 companies in determining the payment of the annual reg-
16 istry fee.

17 "(e) EFFECTIVE DATE.—

18 "(1) IN GENERAL.—No appraisal management
19 company may perform services related to a federally
20 related transaction in a State after the date that is
21 36 months after the date of the enactment of this
22 section unless such company is registered with such
23 State or subject to oversight by a federal financial
24 institutions regulatory agency.

1 "(2) EXTENSION OF EFFECTIVE DATE.—Sub-
2 ject to the approval of the Council, the Appraisal
3 Subcommittee may extend by an additional 12
4 months the requirements for the registration and su-
5 pervision of appraisal management companies if it
6 makes a written finding that a State has made sub-
7 stantial progress in establishing a State appraisal
8 management company registration and supervision
9 system that appears to conform with the provisions
10 of this title.".

11 (3) STATE APPRAISER CERTIFYING AND LI-
12 CENSING AGENCY AUTHORITY.—Section 1117 of the
13 Financial Institutions Reform, Recovery, and En-
14 forcement Act of 1989 (12 U.S.C. 3346) is amended
15 by adding at the end the following: "The duties of
16 such agency may additionally include the registra-
17 tion and supervision of appraisal management com-
18 panies.".

19 (4) APPRAISAL MANAGEMENT COMPANY DEFI-
20 NITION.—Section 1121 of the Financial Institutions
21 Reform, Recovery, and Enforcement Act of 1989
22 (12 U.S.C. 3350) is amended by adding at the end
23 the following:

24 "(11) APPRAISAL MANAGEMENT COMPANY.—
25 The term 'appraisal management company' means,

1 in connection with valuing properties collateralizing
2 mortgage loans or mortgages incorporated into a
3 securitization, any external third party authorized ei-
4 ther by a creditor of a consumer credit transaction
5 secured by a consumer's principal dwelling or by an
6 underwriter of or other principal in the secondary
7 mortgage markets, that oversees a network or panel
8 of more than 15 certified or licensed appraisers in
9 a State or 25 or more nationally within a given
10 year—
11 "(A) to recruit, select, and retain apprais-
12 ers;
13 "(B) to contract with licensed and certified
14 appraisers to perform appraisal assignments;
15 "(C) to manage the process of having an
16 appraisal performed, including providing admin-
17 istrative duties such as receiving appraisal or-
18 ders and appraisal reports, submitting com-
19 pleted appraisal reports to creditors and under-
20 writers, collecting fees from creditors and un-
21 derwriters for services provided, and reimburs-
22 ing appraisers for services performed; or
23 "(D) to review and verify the work of ap-
24 praisers.".

1 (g) STATE AGENCY REPORTING REQUIREMENT.—
2 Section 1109(a) of the Financial Institutions Reform, Re-
3 covery, and Enforcement Act of 1989 (12 U.S.C. 3338(a))
4 is amended—
5 (1) by striking "and" after the semicolon in
6 paragraph (1);
7 (2) by redesignating paragraph (2) as para-
8 graph (4); and
9 (3) by inserting after paragraph (1) the fol-
10 lowing new paragraphs:
11 "(2) transmit reports on sanctions, disciplinary
12 actions, license and certification revocations, and li-
13 cense and certification suspensions on a timely basis
14 to the national registry of the Appraisal Sub-
15 committee;
16 "(3) transmit reports on a timely basis of su-
17 pervisory activities involving appraisal management
18 companies or other third-party providers of apprais-
19 als and appraisal management services, including in-
20 vestigations initiated and disciplinary actions taken;
21 and".
22 (h) REGISTRY FEES MODIFIED.—
23 (1) IN GENERAL.—Section 1109(a) of the Fi-
24 nancial Institutions Reform, Recovery, and Enforce-

1 ment Act of 1989 (12 U.S.C. 3338(a)) is amend-
2 ed—
3 (A) by amending paragraph (4) (as modi-
4 fied by section 9503(g)) to read as follows:
5 "(4) collect—
6 "(A) from such individuals who perform or
7 seek to perform appraisals in federally related
8 transactions, an annual registry fee of not more
9 than $40, such fees to be transmitted by the
10 State agencies to the Council on an annual
11 basis; and
12 "(B) from an appraisal management com-
13 pany that either has registered with a State ap-
14 praiser certifying and licensing agency in ac-
15 cordance with this title or operates as a sub-
16 sidiary of a federally regulated financial institu-
17 tion, an annual registry fee of—
18 "(i) in the case of such a company
19 that has been in existence for more than a
20 year, $25 multiplied by the number of ap-
21 praisers working for or contracting with
22 such company in such State during the
23 previous year, but where such $25 amount
24 may be adjusted, up to a maximum of $50,
25 at the discretion of the Appraisal Sub-

1 committee, if necessary to carry out the
2 Subcommittee's functions under this title;
3 and
4 "(ii) in the case of such a company
5 that has not been in existence for more
6 than a year, $25 multiplied by an appro-
7 priate number to be determined by the Ap-
8 praisal Subcommittee, and where such
9 number will be used for determining the
10 fee of all such companies that were not in
11 existence for more than a year, but where
12 such $25 amount may be adjusted, up to
13 a maximum of $50, at the discretion of the
14 Appraisal Subcommittee, if necessary to
15 carry out the Subcommittee's functions
16 under this title."; and
17 (B) by amending the matter following
18 paragraph (4), as redesignated, to read as fol-
19 lows:
20 "Subject to the approval of the Council, the Appraisal
21 Subcommittee may adjust the dollar amount of registry
22 fees under paragraph (4)(A), up to a maximum of $80
23 per annum, as necessary to carry out its functions under
24 this title. The Appraisal Subcommittee shall consider at
25 least once every 5 years whether to adjust the dollar

1 amount of the registry fees to account for inflation. In
2 implementing any change in registry fees, the Appraisal
3 Subcommittee shall provide flexibility to the States for
4 multi-year certifications and licenses already in place, as
5 well as a transition period to implement the changes in
6 registry fees. In establishing the amount of the annual
7 registry fee for an appraisal management company, the
8 Appraisal Subcommittee shall have the discretion to im-
9 pose a minimum annual registry fee for an appraisal man-
10 agement company to protect against the under reporting
11 of the number of appraisers working for or contracted by
12 the appraisal management company.".

13 (2) INCREMENTAL REVENUES.—Incremental
14 revenues collected pursuant to the increases required
15 by this subsection shall be placed in a separate ac-
16 count at the United States Treasury, entitled the
17 "Appraisal Subcommittee Account".

18 (i) GRANTS AND REPORTS.—Section 1109(b) of the
19 Financial Institutions Reform, Recovery, and Enforce-
20 ment Act of 1989 (12 U.S.C. 3348(b)) is amended—

21 (1) by striking "and" after the semicolon in
22 paragraph (3);

23 (2) by striking the period at the end of para-
24 graph (4) and inserting a semicolon;

1 (3) by adding at the end the following new
2 paragraphs:
3 "(5) to make grants to State appraiser certi-
4 fying and licensing agencies to support the efforts of
5 such agencies to comply with this title, including—
6 "(A) the complaint process, complaint in-
7 vestigations, and appraiser enforcement activi-
8 ties of such agencies; and
9 "(B) the submission of data on State li-
10 censed and certified appraisers and appraisal
11 management companies to the National ap-
12 praisal registry, including information affirming
13 that the appraiser or appraisal management
14 company meets the required qualification cri-
15 teria and formal and informal disciplinary ac-
16 tions; and
17 "(6) to report to all State appraiser certifying
18 and licensing agencies when a license or certification
19 is surrendered, revoked, or suspended.".
20 Obligations authorized under this subsection may not ex-
21 ceed 75 percent of the fiscal year total of incremental in-
22 crease in fees collected and deposited in the "Appraisal
23 Subcommittee Account" pursuant to subsection (h).

1 (j) CRITERIA.—Section 1116 of the Financial Institu-
2 tions Reform, Recovery, and Enforcement Act of 1989 (12
3 U.S.C. 3345) is amended—
4 (1) in subsection (c), by inserting "whose cri-
5 teria for the licensing of a real estate appraiser cur-
6 rently meet or exceed the minimum criteria issued
7 by the Appraisal Qualifications Board of The Ap-
8 praisal Foundation for the licensing of real estate
9 appraisers" before the period at the end; and
10 (2) by striking subsection (e) and inserting the
11 following new subsection:
12 "(e) MINIMUM QUALIFICATION REQUIREMENTS.—
13 Any requirements established for individuals in the posi-
14 tion of 'Trainee Appraiser' and 'Supervisory Appraiser'
15 shall meet or exceed the minimum qualification require-
16 ments of the Appraiser Qualifications Board of The Ap-
17 praisal Foundation. The Appraisal Subcommittee shall
18 have the authority to enforce these requirements.".
19 (k) MONITORING OF STATE APPRAISER CERTIFYING
20 AND LICENSING AGENCIES.—Section 1118 of the Finan-
21 cial Institutions Reform, Recovery, and Enforcement Act
22 of 1989 (12 U.S.C. 3347) is amended—
23 (1) by amending subsection (a) to read as fol-
24 lows:

1 "(a) IN GENERAL.—The Appraisal Subcommittee
2 shall monitor each State appraiser certifying and licensing
3 agency for the purposes of determining whether such
4 agency—
5 "(1) has policies, practices, funding, staffing,
6 and procedures that are consistent with this title;
7 "(2) processes complaints and completes inves-
8 tigations in a reasonable time period;
9 "(3) appropriately disciplines sanctioned ap-
10 praisers and appraisal management companies;
11 "(4) maintains an effective regulatory program;
12 and
13 "(5) reports complaints and disciplinary actions
14 on a timely basis to the national registries on ap-
15 praisers and appraisal management companies main-
16 tained by the Appraisal Subcommittee.
17 The Appraisal Subcommittee shall have the authority to
18 remove a State licensed or certified appraiser or a reg-
19 istered appraisal management company from a national
20 registry on an interim basis pending State agency action
21 on licensing, certification, registration, and disciplinary
22 proceedings. The Appraisal Subcommittee and all agen-
23 cies, instrumentalities, and Federally recognized entities
24 under this title shall not recognize appraiser certifications
25 and licenses from States whose appraisal policies, prac-

1 tices, funding, staffing, or procedures are found to be in-
2 consistent with this title. The Appraisal Subcommittee
3 shall have the authority to impose sanctions, as described
4 in this section, against a State agency that fails to have
5 an effective appraiser regulatory program. In determining
6 whether such a program is effective, the Appraisal Sub-
7 committee shall include an analyses of the licensing and
8 certification of appraisers, the registration of appraisal
9 management companies, the issuance of temporary li-
10 censes and certifications for appraisers, the receiving and
11 tracking of submitted complaints against appraisers and
12 appraisal management companies, the investigation of
13 complaints, and enforcement actions against appraisers
14 and appraisal management companies. The Appraisal
15 Subcommittee shall have the authority to impose interim
16 actions and suspensions against a State agency as an al-
17 ternative to, or in advance of, the derecognition of a State
18 agency.".

19 (2) in subsection (b)(2), by inserting after "au-
20 thority" the following: "or sufficient funding".

21 (l) RECIPROCITY.—Subsection (b) of section 1122 of
22 the Financial Institutions Reform, Recovery, and Enforce-
23 ment Act of 1989 (12 U.S.C. 3351(b)) is amended to read
24 as follows:

1 "(b) RECIPROCITY.—A State appraiser certifying or
2 licensing agency shall issue a reciprocal certification or li-
3 cense for an individual from another State when—
4 "(1) the appraiser licensing and certification
5 program of such other State is in compliance with
6 the provisions of this title; and
7 "(2) the appraiser holds a valid certification
8 from a State whose requirements for certification or
9 licensing meet or exceed the licensure standards es-
10 tablished by the State where an individual seeks ap-
11 praisal licensure.".
12 (m) CONSIDERATION OF PROFESSIONAL APPRAISAL
13 DESIGNATIONS.—Section 1122(d) of the Financial Insti-
14 tutions Reform, Recovery, and Enforcement Act of 1989
15 (12 U.S.C. 3351(d)) is amended by striking "shall not ex-
16 clude" and all that follows through the end of the sub-
17 section and inserting the following: "may include edu-
18 cation achieved, experience, sample appraisals, and ref-
19 erences from prior clients. Membership in a nationally rec-
20 ognized professional appraisal organization may be a cri-
21 teria considered, though lack of membership therein shall
22 not be the sole bar against consideration for an assign-
23 ment under these criteria.".
24 (n) APPRAISER INDEPENDENCE.—Section 1122 of
25 the Financial Institutions Reform, Recovery, and Enforce-

1 ment Act of 1989 (12 U.S.C. 3351) is amended by adding
2 at the end the following new subsection:
3 "(g) APPRAISER INDEPENDENCE MONITORING.—
4 The Appraisal Subcommittee shall monitor each State ap-
5 praiser certifying and licensing agency for the purpose of
6 determining whether such agency's policies, practices, and
7 procedures are consistent with the purposes of maintain-
8 ing appraiser independence and whether such State has
9 adopted and maintains effective laws, regulations, and
10 policies aimed at maintaining appraiser independence.".
11 (o) APPRAISER EDUCATION.—Section 1122 of the
12 Financial Institutions Reform, Recovery, and Enforce-
13 ment Act of 1989 (12 U.S.C. 3351) is amended by insert-
14 ing after subsection (g) (as added by subsection (l) of this
15 section) the following new subsection:
16 "(h) APPROVED EDUCATION.—The Appraisal Sub-
17 committee shall encourage the States to accept courses ap-
18 proved by the Appraiser Qualification Board's Course Ap-
19 proval Program.".
20 (p) APPRAISAL COMPLAINT HOTLINE.—Section 1122
21 of the Financial Institutions Reform, Recovery, and En-
22 forcement Act of 1989 (12 U.S.C. 3351), as amended by
23 this section, is further amended by adding at the end the
24 following new subsection:

1 "(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—
2 If, 1 year after the date of the enactment of this sub-
3 section, the Appraisal Subcommittee determines that no
4 national hotline exists to receive complaints of non-compli-
5 ance with appraisal independence standards and Uniform
6 Standards of Professional Appraisal Practice, including
7 complaints from appraisers, individuals, or other entities
8 concerning the improper influencing or attempted im-
9 proper influencing of appraisers or the appraisal process,
10 the Appraisal Subcommittee shall establish and operate
11 such a national hotline, which shall include a toll-free tele-
12 phone number and an email address. If the Appraisal Sub-
13 committee operates such a national hotline, the Appraisal
14 Subcommittee shall refer complaints for further action to
15 appropriate governmental bodies, including a State ap-
16 praiser certifying and licensing agency, a financial institu-
17 tion regulator, or other appropriate legal authorities. For
18 complaints referred to State appraiser certifying and li-
19 censing agencies or to Federal regulators, the Appraisal
20 Subcommittee shall have the authority to follow up such
21 complaint referrals in order to determine the status of the
22 resolution of the complaint.".

23 (q) AUTOMATED VALUATION MODELS.—Title XI of
24 the Financial Institutions Reform, Recovery, and Enforce-
25 ment Act of 1989 (12 U.S.C. 3331 et seq.), as amended

1 by this section, is further amended by adding at the end
2 the following new section (and amending the table of con-
3 tents accordingly):

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

6 "(a) IN GENERAL.—Automated valuation models
7 shall adhere to quality control standards designed to—
8 "(1) ensure a high level of confidence in the es-
9 timates produced by automated valuation models;
10 "(2) protect against the manipulation of data;
11 "(3) seek to avoid conflicts of interest; and
12 "(4) require random sample testing and re-
13 views, where such testing and reviews are performed
14 by an appraiser who is licensed or certified in the
15 State where the testing and reviews take place.

16 "(b) ADOPTION OF REGULATIONS.—The Appraisal
17 Subcommittee and its member agencies, in consultation
18 with the Appraisal Standards Board of the Appraisal
19 Foundation and other interested parties, shall promulgate
20 regulations to implement the quality control standards re-
21 quired under this section.

22 "(c) ENFORCEMENT.—Compliance with regulations
23 issued under this subsection shall be enforced by—
24 "(1) with respect to a financial institution, or
25 subsidiary owned and controlled by a financial insti-

1 tution and regulated by a Federal financial institu-
2 tion regulatory agency, the Federal financial institu-
3 tion regulatory agency that acts as the primary Fed-
4 eral supervisor of such financial institution or sub-
5 sidiary; and

6 "(2) with respect to other persons, the Ap-
7 praisal Subcommittee.

8 "(d) AUTOMATED VALUATION MODEL DEFINED.—
9 For purposes of this section, the term 'automated valu-
10 ation model' means any computerized model used by mort-
11 gage originators and secondary market issuers to deter-
12 mine the collateral worth of a mortgage secured by a con-
13 sumer's principal dwelling.".

14 (r) BROKER PRICE OPINIONS.—Title XI of the Fi-
15 nancial Institutions Reform, Recovery, and Enforcement
16 Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this
17 section, is further amended by adding at the end the fol-
18 lowing new section (and amending the table of contents
19 accordingly):

20 **"SEC. 1126. BROKER PRICE OPINIONS.**

21 "(a) GENERAL PROHIBITION.—In conjunction with
22 the purchase of a consumer's principal dwelling, broker
23 price opinions may not be used as the primary basis to
24 determine the value of a piece of property for the purpose

1 of a loan origination of a residential mortgage loan se-
2 cured by such piece of property.

3 "(b) BROKER PRICE OPINION DEFINED.—For pur-
4 poses of this section, the term 'broker price opinion' means
5 an estimate prepared by a real estate broker, agent, or
6 sales person that details the probable selling price of a
7 particular piece of real estate property and provides a
8 varying level of detail about the property's condition, mar-
9 ket, and neighborhood, and information on comparable
10 sales, but does not include an automated valuation model,
11 as defined in section 1125(c).".

12 (s) AMENDMENTS TO APPRAISAL SUBCOMMITTEE.—
13 Section 1011 of the Federal Financial Institutions Exam-
14 ination Council Act of 1978 (12 U.S.C. 3310) is amend-
15 ed—

16 (1) in the first sentence, by adding before the
17 period the following: "and the Federal Housing Fi-
18 nance Agency"; and

19 (2) by inserting at the end the following: "At
20 all times at least one member of the Appraisal Sub-
21 committee shall have demonstrated knowledge and
22 competence through licensure, certification, or pro-
23 fessional designation within the appraisal profes-
24 sion.".

25 (t) TECHNICAL CORRECTIONS.—

1 (1) Section 1119(a)(2) of the Financial Institu-
2 tions Reform, Recovery, and Enforcement Act of
3 1989 (12 U.S.C. 3348(a)(2)) is amended by striking
4 "council," and inserting "Council,".
5 (2) Section 1121(6) of the Financial Institu-
6 tions Reform, Recovery, and Enforcement Act of
7 1989 (12 U.S.C. 3350(6)) is amended by striking
8 "Corporations," and inserting "Corporation,".
9 (3) Section 1121(8) of the Financial Institu-
10 tions Reform, Recovery, and Enforcement Act of
11 1989 (12 U.S.C. 3350(8)) is amended by striking
12 "council" and inserting "Council".
13 (4) Section 1122 of the Financial Institutions
14 Reform, Recovery, and Enforcement Act of 1989
15 (12 U.S.C. 3351) is amended—
16 (A) in subsection (a)(1) by moving the left
17 margin of subparagraphs (A), (B), and (C) 2
18 ems to the right; and
19 (B) in subsection (c)—
20 (i) by striking "Federal Financial In-
21 stitutions Examination Council" and in-
22 serting "Financial Institutions Examina-
23 tion Council"; and

1 (ii) by striking "the council's func-
2 tions" and inserting "the Council's func-
3 tions".

4 **SEC. 9504. STUDY REQUIRED ON IMPROVEMENTS IN AP-**
5 **PRAISAL PROCESS AND COMPLIANCE PRO-**
6 **GRAMS.**

7 (a) STUDY.—The Comptroller General shall conduct
8 a comprehensive study on possible improvements in the
9 appraisal process generally, and specifically on the consist-
10 ency in and the effectiveness of, and possible improve-
11 ments in, State compliance efforts and programs in ac-
12 cordance with title XI of the Financial Institutions Re-
13 form, Recovery, and Enforcement Act of 1989. In addi-
14 tion, this study shall examine the existing exemptions to
15 the use of certified appraisers issued by Federal financial
16 institutions regulatory agencies. The study shall also re-
17 view the threshold level established by Federal regulators
18 for compliance under title XI and whether there is a need
19 to revise them to reflect the addition of consumer protec-
20 tion to the purposes and functions of the Appraisal Sub-
21 committee. The study shall additionally examine the qual-
22 ity of different types of mortgage collateral valuations pro-
23 duced by broker price opinions, automated valuation mod-
24 els, licensed appraisals, and certified appraisals, among
25 others, and the quality of appraisals provided through dif-

1 ferent distribution channels, including appraisal manage-
2 ment companies, independent appraisal operations within
3 a mortgage originator, and fee-for-service appraisals. The
4 study shall also include an analysis and statistical break-
5 down of enforcement actions taken during the last 10
6 years against different types of appraisers, including cer-
7 tified, licensed, supervisory, and trainee appraisers. Fur-
8 thermore, the study shall examine the benefits and costs,
9 as well as the advantages and disadvantages, of estab-
10 lishing a national repository to collect data related to real
11 estate property collateral valuations performed in the
12 United States.

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

22 (c) ADDITIONAL STUDY REQUIRED.—The Comp-
23 troller General shall conduct an additional study to deter-
24 mine the effects that the changes to the seller-guide ap-
25 praisal requirements of Fannie Mae and Freddie Mac con-

1 tained in the Home Valuation Code of Conduct have on
2 small business, like mortgage brokers and independent ap-
3 praisers, and consumers, including the effect on the—
4 (1) quality and costs of appraisals;
5 (2) length of time for obtaining appraisals;
6 (3) impact on consumer protection, especially
7 regarding maintaining appraisal independence, abat-
8 ing appraisal inflation, and mitigating acts of ap-
9 praisal fraud;
10 (4) structure of the appraisal industry, espe-
11 cially regarding appraisal management companies,
12 fee-for-service appraisers, and the regulation of ap-
13 praisal management companies by the states; and
14 (5) impact on mortgage brokers and other small
15 business professionals in the financial services indus-
16 try.
17 (d) ADDITIONAL REPORT.—Before the end of the 6-
18 month period beginning on the date of the enactment of
19 this Act, the Comptroller General shall submit an addi-
20 tional report to the Committee on Financial Services of
21 the House of Representatives and the Committee on
22 Banking, Housing, and Urban Affairs of the Senate con-
23 taining the findings and conclusions of the Comptroller
24 General with respect to the study conducted pursuant to
25 subsection (c). Such additional report shall take into con-

1 sideration the Small Business Administration's views on
2 how small businesses are affected by the Home Valuation
3 Code of Conduct.

4 **SEC. 9505. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.**

5 Subsection (e) of section 701 of the Equal Credit Op-
6 portunity Act (U.S.C. 1691) is amended to read as fol-
7 lows:

8 "(e) COPIES FURNISHED TO APPLICANTS.—

9 "(1) IN GENERAL.—Each creditor shall furnish
10 to an applicant a copy of any and all written ap-
11 praisals and valuations developed in connection with
12 the applicant's application for a loan that is secured
13 or would have been secured by a first lien on a
14 dwelling promptly upon completion, but in no case
15 later than 3 days prior to the closing of the loan,
16 whether the creditor grants or denies the applicant's
17 request for credit or the application is incomplete or
18 withdrawn.

19 "(2) WAIVER.—The applicant may waive the 3
20 day requirement provided for in paragraph (1), ex-
21 cept where otherwise required in law.

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

1 "(4) FREE COPY.—Notwithstanding paragraph
2 (3), the creditor shall provide a copy of each written
3 appraisal or valuation at no additional cost to the
4 applicant.
5 "(5) NOTIFICATION TO APPLICANTS.—At the
6 time of application, the creditor shall notify an ap-
7 plicant in writing of the right to receive a copy of
8 each written appraisal and valuation under this sub-
9 section.
10 "(6) REGULATIONS.—The Board shall prescribe
11 regulations to implement this subsection within 1
12 year of the date of the enactment of this subsection.
13 "(7) VALUATION DEFINED.—For purposes of
14 this subsection, the term 'valuation' shall include
15 any estimate of the value of a dwelling developed in
16 connection with a creditor's decision to provide cred-
17 it, including those values developed pursuant to a
18 policy of a government sponsored enterprise or by an
19 automated valuation model, a broker price opinion,
20 or other methodology or mechanism.".

1 **SEC. 9506. REAL ESTATE SETTLEMENT PROCEDURES ACT**
2 **OF 1974 AMENDMENT RELATING TO CERTAIN**
3 **APPRAISAL FEES.**

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

7 "(c) The standard form described in subsection (a)
8 shall include, in the case of an appraisal coordinated by
9 an appraisal management company (as such term is de-
10 fined in section 1121(11) of the Financial Institutions Re-
11 form, Recovery, and Enforcement Act of 1989 (12 U.S.C.
12 3350(11))), a clear disclosure of—

13 "(1) the fee paid directly to the appraiser by
14 such company; and

15 "(2) the administration fee charged by such
16 company.".

Subtitle G—Sense of Congress Regarding the Importance of Government Sponsored Enterprises Reform

SEC. 9601. SENSE OF CONGRESS REGARDING THE IMPORTANCE OF GOVERNMENT-SPONSORED ENTERPRISES REFORM TO ENHANCE THE PROTECTION, LIMITATION, AND REGULATION OF THE TERMS OF RESIDENTIAL MORTGAGE CREDIT.

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

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

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

1 (3) In 2004, the Department of Housing and
2 Urban Development revised those goals, increasing
3 them to 56 percent of their overall mortgage pur-
4 chases by 2008, and additionally mandated that 12
5 percent of all mortgage purchases by Fannie Mae
6 and Freddie Mac be "special affordable" loans made
7 to borrowers with incomes less than 60 percent of an
8 area's median income, a target that ultimately in-
9 creased to 28 percent for 2008.
10 (4) To help fulfill those mandated affordable
11 housing goals, in 1995 the Department of Housing
12 and Urban Development authorized Fannie Mae and
13 Freddie Mac to purchase subprime securities that
14 included loans made to low-income borrowers.
15 (5) After this authorization to purchase
16 subprime securities, subprime and near-prime loans
17 increased from 9 percent of securitized mortgages in
18 2001 to 40 percent in 2006, while the market share
19 of conventional mortgages dropped from 78.8 per-
20 cent in 2003 to 50.1 percent by 2007 with a cor-
21 responding increase in subprime and Alt-A loans
22 from 10.1 percent to 32.7 percent over the same pe-
23 riod.
24 (6) In 2004 alone, Fannie Mae and Freddie
25 Mac purchased $175,000,000,000 in subprime mort-

1 gage securities, which accounted for 44 percent of
2 the market that year, and from 2005 through 2007,
3 Fannie Mae and Freddie Mac purchased approxi-
4 mately $1,000,000,000,000 in subprime and Alt-A
5 loans, while Fannie Mae's acquisitions of mortgages
6 with less than 10 percent down payments almost tri-
7 pled.

8 (7) According to data from the Federal Hous-
9 ing Finance Agency (FHFA) for the fourth quarter
10 of 2008, Fannie Mae and Freddie Mac own or guar-
11 antee 75 percent of all newly originated mortgages,
12 and Fannie Mae and Freddie Mac currently own
13 13.3 percent of outstanding mortgage debt in the
14 United States and have issued mortgage-backed se-
15 curities for 31.0 percent of the residential debt mar-
16 ket, a combined total of 44.3 percent of outstanding
17 mortgage debt in the United States.

18 (8) On September 7, 2008, the FHFA placed
19 Fannie Mae and Freddie Mac into conservatorship,
20 with the Treasury Department subsequently agree-
21 ing to purchase at least $200,000,000,000 of pre-
22 ferred stock from each enterprise in exchange for
23 warrants for the purchase of 79.9 percent of each
24 enterprise's common stock.

1 (9) The conservatorship for Fannie Mae and
2 Freddie Mac has potentially exposed taxpayers to
3 upwards of $5,300,000,000,000 worth of risk.
4 (10) The hybrid public-private status of Fannie
5 Mae and Freddie Mac is untenable and must be re-
6 solved to assure that consumers are offered and re-
7 ceive residential mortgage loans on terms that rea-
8 sonably reflect their ability to repay the loans and
9 that are understandable and not unfair, deceptive, or
10 abusive.
11 (b) SENSE OF THE CONGRESS.—It is the sense of
12 the Congress that efforts to enhance by the protection,
13 limitation, and regulation of the terms of residential mort-
14 gage credit and the practices related to such credit would
15 be incomplete without enactment of meaningful structural
16 reforms of Fannie Mae and Freddie Mac.

17 **Subtitle H—Reports**

18 **SEC. 9701. GAO STUDY REPORT ON GOVERNMENT EFFORTS**
19 **TO COMBAT MORTGAGE FORECLOSURE RES-**
20 **CUE SCAMS AND LOAN MODIFICATION**
21 **FRAUD.**

22 (a) STUDY.—The Comptroller General of the United
23 States shall conduct a study of the current inter-agency
24 efforts of the Secretary of the Treasury, the Secretary of
25 Housing and Urban Development, the Attorney General,

1 and the Federal Trade Commission to crackdown on mort-
2 gage foreclosure rescue scams and loan modification fraud
3 in order to advise the Congress to the risks and
4 vulnerabilities of emerging schemes in the loan modifica-
5 tion arena.

6 (b) REPORT.—

7 (1) IN GENERAL.—The Comptroller General
8 shall submit a report to the Congress on the study
9 conducted under subsection (a) containing such rec-
10 ommendations for legislative and administrative ac-
11 tions as the Comptroller General may determine to
12 be appropriate in addition to the recommendations
13 required under paragraph (2).

14 (2) SPECIFIC TOPICS.—The report made under
15 paragraph (1) shall include—

16 (A) an evaluation of the effectiveness of
17 the inter-agency task force current efforts to
18 combat mortgage foreclosure rescue scams and
19 loan modification fraud scams;

20 (B) specific recommendations on agency or
21 legislative action that are essential to properly
22 protect homeowners from mortgage foreclosure
23 rescue scams and loan modification fraud
24 scams; and

1 (C) the adequacy of financial resources
2 that the Federal Government is allocating to—
3 (i) crackdown on loan modification
4 and foreclosure rescue scams; and
5 (ii) the education of homeowners
6 about fraudulent scams relating to loan
7 modification and foreclosure rescues.

8 Subtitle I—Multifamily Mortgage 9 Resolution

10 **SEC. 9801. MULTIFAMILY MORTGAGE RESOLUTION PRO-**
11 **GRAM.**

12 (a) ESTABLISHMENT.—The Secretary of Housing
13 and Urban Development shall develop a program under
14 this subsection to ensure the protection of current and fu-
15 ture tenants and at-risk multifamily properties, where fea-
16 sible, based on criteria that may include—
17 (1) creating sustainable financing of such prop-
18 erties, that may take into consideration such factors
19 as—
20 (A) the rental income generated by such
21 properties; and
22 (B) the preservation of adequate operating
23 reserves;

1 (2) maintaining the level of Federal, State, and
2 city subsidies in effect as of the date of the enact-
3 ment of this Act;
4 (3) providing funds for rehabilitation; and
5 (4) facilitating the transfer of such properties,
6 when appropriate and with the agreement of owners,
7 to responsible new owners and ensuring affordability
8 of such properties. .
9 (b) COORDINATION.—The Secretary of Housing and
10 Urban Development may, in carrying out the program de-
11 veloped under this section, coordinate with the Secretary
12 of the Treasury, the Federal Deposit Insurance Corpora-
13 tion, the Board of Governors of the Federal Reserve Sys-
14 tem, the Federal Housing Finance Agency, and any other
15 Federal Government agency that the Secretary considers
16 appropriate..
17 (c) DEFINITION.—For purposes of this section, the
18 term "multifamily properties" means a residential struc-
19 ture that consists of 5 or more dwelling units.

20 **Subtitle J—Study of Effect of**
21 **Drywall Presence on Foreclosures**

22 **SEC. 9901. STUDY OF EFFECT OF DRYWALL PRESENCE ON**
23 **FORECLOSURES.**

24 (a) STUDY.—The Secretary of Housing and Urban
25 Development, in consultation with the Secretary of the

1 Treasury, shall conduct a study of the effect on residential
2 mortgage loan foreclosures of—
3 (1) the presence in residential structures sub-
4 ject to such mortgage loans of drywall that was im-
5 ported from China during the period beginning with
6 2004 and ending at the end of 2007; and
7 (2) the availability of property insurance for
8 residential structures in which such drywall is
9 present.
10 (b) REPORT.—Not later than the expiration of the
11 120-day period beginning on the date of the enactment
12 of this Act, the Secretary of Housing and Urban Develop-
13 ment shall submit to the Congress a report on the study
14 conducted under subsection (a) containing its findings,
15 conclusions, and recommendations.

Insert at the end of the table of contents the following:

TITLE VII—MORTGAGE REFORM AND ANTI-PREDATORY LENDING ACT

Sec. 9000. Short title; designation as enumerated consumer law.

Subtitle A—Residential Mortgage Loan Origination Standards

Sec. 9001. Definitions.
Sec. 9002. Residential mortgage loan origination.
Sec. 9003. Prohibition on steering incentives.
Sec. 9004. Liability.
Sec. 9005. Regulations.
Sec. 9006. Study of shared appreciation mortgages.

Subtitle B—Minimum Standards For Mortgages

Sec. 9101. Ability to repay.
Sec. 9102. Net tangible benefit for refinancing of residential mortgage loans.

Sec. 9103. Safe harbor and rebuttable presumption.
Sec. 9104. Liability.
Sec. 9105. Defense to foreclosure.
Sec. 9106. Additional standards and requirements.
Sec. 9107. Rule of construction.
Sec. 9108. Effect on State laws.
Sec. 9109. Regulations.
Sec. 9110. Amendments to civil liability provisions.
Sec. 9111. Lender rights in the context of borrower deception.
Sec. 9112. Six-month notice required before reset of hybrid adjustable rate mortgages.
Sec. 9113. Required disclosures.
Sec. 9114. Disclosures required in monthly statements for residential mortgage loans.
Sec. 9115. Legal assistance for foreclosure-related issues.
Sec. 9116. Effective date.
Sec. 9117. Report by the GAO.
Sec. 9118. State Attorney General enforcement authority.

Subtitle C—High-Cost Mortgages

Sec. 9201. Definitions relating to high-cost mortgages.
Sec. 9202. Amendments to existing requirements for certain mortgages.
Sec. 9203. Additional requirements for certain mortgages.
Sec. 9204. Regulations.
Sec. 9205. Effective date.

Subtitle D—Office of Housing Counseling

Sec. 9301. Short title.
Sec. 9302. Establishment of Office of Housing Counseling.
Sec. 9303. Counseling procedures.
Sec. 9304. Grants for housing counseling assistance.
Sec. 9305. Requirements to use HUD-certified counselors under HUD programs.
Sec. 9306. Study of defaults and foreclosures.
Sec. 9307. Default and foreclosure database.
Sec. 9308. Definitions for counseling-related programs.
Sec. 9309. Accountability and transparency for grant recipients.
Sec. 9310. Updating and simplification of mortgage information booklet.
Sec. 9311. Home inspection counseling.
Sec. 9312. Warnings to homeowners of foreclosure rescue scams.

Subtitle E—Mortgage Servicing

Sec. 9401. Escrow and impound accounts relating to certain consumer credit transactions.
Sec. 9402. Disclosure notice required for consumers who waive escrow services.
Sec. 9403. Real Estate Settlement Procedures Act of 1974 amendments.
Sec. 9404. Truth in Lending Act amendments.
Sec. 9405. Escrows included in repayment analysis.

Subtitle F—Appraisal Activities

Sec. 9501. Property appraisal requirements.
Sec. 9502. Unfair and deceptive practices and acts relating to certain consumer credit transactions.

Sec. 9503. Amendments relating to Appraisal Subcommittee of FIEC, Appraiser Independence Monitoring, Approved Appraiser Education, Appraisal Management Companies, Appraiser Complaint Hotline, Automated Valuation Models, and Broker Price Opinions.

Sec. 9504. Study required on improvements in appraisal process and compliance programs.

Sec. 9505. Equal Credit Opportunity Act amendment.

Sec. 9506. Real Estate Settlement Procedures Act of 1974 amendment relating to certain appraisal fees.

Subtitle G—Sense of Congress Regarding the Importance of Government Sponsored Enterprises Reform

Sec. 9601. Sense of Congress regarding the importance of Government-sponsored enterprises reform to enhance the protection, limitation, and regulation of the terms of residential mortgage credit.

Subtitle H—Reports

Sec. 9701. GAO study report on government efforts to combat mortgage foreclosure rescue scams and loan modification fraud.

Subtitle I—Multifamily Mortgage Resolution

Sec. 9801. Multifamily mortgage resolution program.

Subtitle J—Study of Effect of Drywall Presence on Foreclosures

Sec. 9901. Study of effect of drywall presence on foreclosures.

AMENDMENT TO H.R. 4173

OFFERED BY _____

Add at the end of title I the following new section:

SEC. ___. REDUCING TARP FUNDS TO OFFSET COSTS.

Section 115(a)(3) of the Emergency Economic Stabilization Act of 2008 (12 U.S.C. 5225(a)(3)) is amended by striking "$700,000,000,000, as such amount is reduced by $1,259,000,000,, as such amount is reduced by $1,244,000,000, outstanding at any one time" and inserting "$700,000,000,000, as such amount is reduced by $22,059,000,000, outstanding at any one time".