

110TH CONGRESS
1ST SESSION

S. 2452

To amend the Truth in Lending Act to provide protection to consumers with respect to certain high-cost loans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

DECEMBER 12, 2007

Mr. REID (for Mr. DODD (for himself, Mr. REED, Mr. SCHUMER, Mr. MENENDEZ, Mr. AKAKA, Mr. BROWN, Mr. CASEY, Mr. KENNEDY, Mr. KERRY, Mr. HARKIN, Ms. MIKULSKI, Mrs. BOXER, Mrs. McCASKILL, Ms. KLOBUCHAR, Mrs. FEINSTEIN, and Mr. DURBIN)) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Truth in Lending Act to provide protection to consumers with respect to certain high-cost loans, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Home Ownership Preservation and Protection Act of
6 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Effective date and regulations.

TITLE I—HIGH-COST MORTGAGES

- Sec. 101. Definitions relating to high-cost mortgages.
- Sec. 102. Additional protections for HOEPA loans.

TITLE II—PROTECTIONS APPLICABLE TO SUBPRIME AND CERTAIN OTHER LOANS

- Sec. 201. Truth in Lending Act amendments.

TITLE III—PROTECTIONS FOR ALL HOME LOAN BORROWERS

- Sec. 301. Mortgage protections.

TITLE IV—GOOD FAITH AND FAIR DEALING IN APPRAISALS

- Sec. 401. Duties of appraisers.

TITLE V—GOOD FAITH AND FAIR DEALING IN HOME LOAN SERVICING

- Sec. 501. Duties of lenders and loan servicers.
- Sec. 502. Real estate settlement procedures.
- Sec. 503. Effective date.

TITLE VI—FORECLOSURE PREVENTION COUNSELING

- Sec. 601. Foreclosure prevention counseling.

TITLE VII—REMEDIES AND ENFORCEMENT

- Sec. 701. Material disclosures and violations.
- Sec. 702. Right of rescission.
- Sec. 703. Civil liability.
- Sec. 704. Liability for monetary damages.
- Sec. 705. Remedy in lieu of rescission for certain violations.
- Sec. 706. Prohibition on mandatory arbitration.
- Sec. 707. Lender liability.

TITLE VIII—OTHER BANKING AGENCY AUTHORITY

- Sec. 801. Inclusion of all banking agencies in the regulatory authority under the Federal Trade Commission Act with respect to depository institutions.

TITLE IX—MISCELLANEOUS

- Sec. 901. Authorizations.

1 SEC. 2. DEFINITIONS.

2 Section 103 of the Truth in Lending Act (15 U.S.C.

3 1602) is amended by adding at the end the following:

1 “(cc) DEFINITIONS RELATING TO HOME MORTGAGE
2 LOANS.—

3 “(1) HOME MORTGAGE LOAN.—The term ‘home
4 mortgage loan’ means a consumer credit transaction
5 secured by a home, used or intended to be used as
6 a principal dwelling, regardless of whether it is real
7 or personal property, or whether the loan is used to
8 purchase the home.

9 “(2) MORTGAGE BROKER.—The term ‘mortgage
10 broker’ means a person who, for compensation or in
11 anticipation of compensation, arranges or negotiates
12 or attempts to arrange or negotiate home mortgage
13 loans or commitments for such loans, refers appli-
14 cants or prospective applicants to creditors, or se-
15 lects or offers to select creditors to whom requests
16 for credit may be made.

17 “(3) MORTGAGE ORIGINATOR.—The term
18 ‘mortgage originator’ means any creditor or other
19 person, including a mortgage broker, who, for com-
20 pensation or in anticipation of compensation, en-
21 engages either directly or indirectly in the acceptance
22 of applications for home mortgage loans, solicitation
23 of home mortgage loans on behalf of consumers, ne-
24 gotiation of terms or conditions of home mortgage
25 loans on behalf of consumers or lenders, or negotia-

1 tion of sales of existing home mortgage loans to in-
2 stitutional or noninstitutional lenders. It also in-
3 cludes any employee or agent of such person.

4 “(4) NONTRADITIONAL MORTGAGE LOAN.—The
5 term ‘nontraditional mortgage loan’ means a home
6 mortgage loan that allows a consumer to defer pay-
7 ment of principal or interest.

8 “(5) SUBPRIME MORTGAGE LOAN.—

9 “(A) IN GENERAL.—The term ‘subprime
10 mortgage loan’ means a home mortgage loan in
11 which the annual percentage rate exceeds the
12 greater of the thresholds determined under sub-
13 paragraph (B) or (C), as applicable.

14 “(B) TREASURY SECURITIES RATE
15 SPREAD.—A home mortgage loan is a subprime
16 mortgage loan if the difference between the an-
17 nual percentage rate for the loan and the yield
18 on United States Treasury securities having
19 comparable periods of maturity is equal to or
20 greater than—

21 “(i) 3 percentage points, if the loan is
22 secured by a first lien mortgage or deed of
23 trust; or

1 “(ii) 5 percentage points, if the loan is
2 secured by a subordinate lien mortgage or
3 deed of trust.

4 “(C) CONVENTIONAL MORTGAGE RATE
5 SPREAD.—A home mortgage loan is a subprime
6 mortgage loan if the difference between the an-
7 nual percentage rate for the loan and the an-
8 nual yield on conventional mortgages, as pub-
9 lished by the Board of Governors of the Federal
10 Reserve System in statistical release H.15 (or
11 any successor publication thereto) is either
12 equal to or greater than—

13 “(i) 1.75 percentage points, if the
14 loan is secured by a first lien mortgage or
15 deed of trust; or

16 “(ii) 3.75 percentage points, if the
17 loan is secured by a subordinate lien mort-
18 gage or deed of trust.

19 “(D) RULE OF CONSTRUCTION.—For pur-
20 poses of subparagraph (B), the difference be-
21 tween the annual percentage rate of a home
22 mortgage loan and the yield on United States
23 Treasury securities having comparable periods
24 of maturity shall be determined using the same
25 procedures and calculation methods applicable

1 to loans that are subject to the reporting re-
 2 quirements of the Federal Home Mortgage Dis-
 3 closure Act, whether or not such loan is subject
 4 to or reportable under the provisions of that
 5 Act.”.

6 **SEC. 3. EFFECTIVE DATE AND REGULATIONS.**

7 (a) **EFFECTIVE DATE.**—This Act and the amend-
 8 ments made by this Act shall become effective 6 months
 9 after the date of enactment of this Act, and shall apply
 10 to all transactions consummated on or after that effective
 11 date, except as otherwise specifically provided herein.

12 (b) **REGULATIONS REQUIRED.**—Not later than 6
 13 months after the date of enactment of this Act, the Board
 14 of Governors of the Federal Reserve System shall issue
 15 in final form such regulations as are necessary to carry
 16 out this Act and the amendments made by this Act.

17 **TITLE I—HIGH-COST**
 18 **MORTGAGES**

19 **SEC. 101. DEFINITIONS RELATING TO HIGH-COST MORT-**
 20 **GAGES.**

21 (a) **HIGH-COST MORTGAGE DEFINED.**—Section
 22 103(aa) of the Truth in Lending Act (15 U.S.C.
 23 1602(aa)) is amended by striking all that precedes para-
 24 graph (2) and inserting the following:

25 “(aa) **HIGH-COST MORTGAGE.**—

1 “(1) DEFINITION.—

2 “(A) IN GENERAL.—The term ‘high-cost
3 mortgage’, and a mortgage referred to in this
4 subsection, mean a consumer credit transaction
5 that is secured by the principal dwelling of a
6 consumer, other than a reverse mortgage trans-
7 action, if—

8 “(i) in the case of a loan secured—

9 “(I) by a first mortgage on such
10 dwelling, the annual percentage rate
11 at consummation of the transaction
12 will exceed by more than 8 percentage
13 points the yield on United States
14 Treasury securities having comparable
15 periods of maturity on the 15th day of
16 the month immediately preceding the
17 month in which the application for the
18 extension of credit is received by the
19 creditor; or

20 “(II) by a subordinate or junior
21 mortgage on such dwelling, the annual
22 percentage rate at consummation of
23 the transaction will exceed by more
24 than 10 percentage points the yield on
25 United States Treasury securities hav-

1 ing comparable periods of maturity on
2 the 15th day of the month imme-
3 diately preceding the month in which
4 the application for the extension of
5 credit is received by the creditor; or

6 “(ii) the total points and fees payable
7 in connection with the loan exceed—

8 “(I) in the case of a loan for
9 \$20,000 or more, 5 percent of the
10 total loan amount; or

11 “(II) in the case of a loan for
12 less than \$20,000, the lesser of 8 per-
13 cent of the total loan amount or
14 \$1,000.

15 “(B) INTRODUCTORY RATES TAKEN INTO
16 ACCOUNT.—For purposes of subparagraph
17 (A)(i), the annual percentage rate shall be de-
18 termined as—

19 “(i) in the case of a fixed-rate loan in
20 which the rate of interest will not vary
21 during the term of the loan, the interest
22 rate in effect on the date of consummation
23 of the transaction;

24 “(ii) in the case of a loan in which the
25 rate of interest varies solely in accordance

1 with an index, the interest rate determined
2 by adding the index rate in effect on the
3 date of consummation of the transaction to
4 the maximum margin permitted at any
5 time by the terms of the loan agreement;
6 and

7 “(iii) in the case of any other loan in
8 which the rate may vary at any time dur-
9 ing the term of the loan for any reason,
10 the interest charged on the loan at the
11 maximum rate that may be charged during
12 the term of the loan.”.

13 (b) ADJUSTMENT OF PERCENTAGE POINTS.—Section
14 103(aa)(2) of the Truth in Lending Act (15 U.S.C.
15 1602(aa)(2)) is amended by striking subparagraph (B)
16 and inserting the following:

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

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

23 “(ii) may not result in the number of percent-
24 age points referred to in paragraph (1)(A)(i)(II)

1 being less than 8 percentage points or greater than
2 12 percentage points.”.

3 (c) POINTS AND FEES DEFINED.—

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

7 (A) by striking “(1)(B)” and inserting
8 “(1)(A)(ii)”;

9 (B) by striking subparagraph (B) and in-
10 sserting the following:

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

16 (C) in subparagraph (C)(iii), by striking
17 “and” at the end;

18 (D) by redesignating subparagraph (D) as
19 subparagraph (G); and

20 (E) by inserting after subparagraph (C)
21 the following:

22 “(D) premiums or other charges payable at or
23 before consummation of the loan for any credit life,
24 credit disability, credit unemployment, or credit
25 property insurance, or any other accident, loss-of-in-

1 come, life, or health insurance, or any payments di-
2 rectly or indirectly for any debt cancellation or sus-
3 pension agreement or contract, except that insurance
4 premiums or debt cancellation or suspension fees
5 calculated and paid in full on a monthly basis shall
6 not be considered financed by the creditor;

7 “(E) the maximum prepayment fees and pen-
8 alties which may be charged or collected under the
9 terms of the loan documents;

10 “(F) all prepayment fees or penalties that are
11 incurred by the customer, if the loan refinances a
12 previous loan made or currently held by the same
13 creditor or an affiliate of the creditor; and”.

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

17 (A) by redesignating paragraph (5) as
18 paragraph (7); and

19 (B) by inserting after paragraph (4) the
20 following:

21 “(5) CALCULATION OF POINTS AND FEES FOR
22 OPEN-END LOANS.—In the case of a loan under an
23 open-end credit plan, points and fees shall be cal-
24 culated, for purposes of this section and section 129,
25 by adding the total points and fees known at or be-

1 fore closing, including the maximum prepayment
2 penalties which may be charged or collected under
3 the terms of the loan documents, plus the minimum
4 additional fees that the consumer would be required
5 to pay to draw down an amount equal to the total
6 credit line.”.

7 (d) HIGH-COST MORTGAGE LENDER.—Section
8 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f))
9 is amended by striking the last sentence and inserting the
10 following: “Any person who originates or brokers 2 or
11 more mortgages referred to in subsection (aa) in any 12-
12 month period, any person who originates 1 or more such
13 mortgages through a mortgage broker in any 12-month
14 period or in connection with a table funded transaction
15 involving such a mortgage, and any person to whom the
16 obligation is initially assigned at or after settlement, shall
17 be considered to be a creditor for purposes of this title.”.

18 (e) BONA FIDE DISCOUNT LOAN DISCOUNT POINTS
19 AND PREPAYMENT PENALTIES.—Section 103(aa) of the
20 Truth in Lending Act (15 U.S.C. 1602(aa)) is amended
21 by inserting after paragraph (5), as added by this Act,
22 the following:

23 “(6) BONA FIDE DISCOUNT POINTS.—

1 “(A) IN GENERAL.—For the purpose of
2 determining the amount of points and fees
3 under this subsection—

4 “(i) not more than 2 bona fide dis-
5 count points payable by the consumer in
6 connection with the mortgage shall be ex-
7 cluded, but only if the interest rate from
8 which the interest rate on the mortgage
9 will be discounted does not exceed by more
10 than 1 percentage point the required net
11 yield for a 90-day standard mandatory de-
12 livery commitment for a reasonably com-
13 parable loan from either the Federal Na-
14 tional Mortgage Association or the Federal
15 Home Loan Mortgage Corporation, which-
16 ever is greater; and

17 “(ii) unless 2 bona fide discount
18 points have been excluded under subpara-
19 graph (A), not more than 1 bona fide dis-
20 count point payable by the consumer in
21 connection with the mortgage shall be ex-
22 cluded, but only if the interest rate from
23 which the interest rate on the mortgage
24 will be discounted does not exceed by more
25 than 2 percentage points the required net

1 yield for a 90-day standard mandatory de-
2 livery commitment for a reasonably com-
3 parable loan from either the Federal Na-
4 tional Mortgage Association or the Federal
5 Home Loan Mortgage Corporation, which-
6 ever is greater.

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

14 “(C) EXCEPTION FOR INTEREST RATE RE-
15 Ductions inconsistent with industry
16 norms.—Subparagraph (A) shall not apply to
17 discount points used to purchase an interest
18 rate reduction, unless the amount of the inter-
19 est rate reduction purchased is reasonably con-
20 sistent with established industry norms and
21 practices for secondary mortgage market trans-
22 actions.”.

1 **SEC. 102. ADDITIONAL PROTECTIONS FOR HOEPA LOANS.**

2 (a) NO PREPAYMENT PENALTIES.—Section 129(c) of
3 the Truth in Lending Act (15 U.S.C. 1639(c)) is amend-
4 ed—

5 (1) by striking paragraph (2); and

6 (2) in paragraph (1)—

7 (A) by striking “(1) IN GENERAL.—”; and

8 (B) by redesignating subparagraphs (A)

9 and (B) as paragraphs (1) and (2), respectively,

10 and moving the margins 2 ems to the left.

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

14 “(e) NO BALLOON PAYMENTS.—No high-cost mort-
15 gage may contain a scheduled payment that is more than
16 twice as large as the average of any earlier required sched-
17 uled payments, except that this subsection shall not apply
18 when the payment schedule is adjusted to the seasonal or
19 irregular income of the consumer.”.

20 (c) OTHER PROHIBITIONS ON HIGH-COST MORT-
21 GAGES.—Section 129 of the Truth in Lending Act (15
22 U.S.C. 1639) is amended by adding at the end the fol-
23 lowing:

24 “(m) NO YIELD SPREAD PREMIUMS.—No person
25 may provide, and no mortgage originator may receive, di-
26 rectly or indirectly, any compensation for originating a

1 home mortgage loan that is more costly than that for
2 which the consumer qualifies, or that is based on, or varies
3 with, the terms of any home mortgage loan.

4 “(n) ACCELERATION OF DEBT.—No high-cost mort-
5 gage may contain a provision which permits the creditor,
6 in its sole discretion, to accelerate the indebtedness, other
7 than in any case in which repayment of the loan has been
8 accelerated by default, pursuant to a due-on-sale provi-
9 sion, or for a breach of a material provision of the loan
10 documents unrelated to the payment schedule.

11 “(o) RESTRICTION ON FINANCING POINTS AND
12 FEES.—No creditor may, directly or indirectly, finance,
13 in connection with any high-cost mortgage—

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; or

18 “(2) any points or fees as defined in section
19 103(aa)(4).

20 “(p) PROHIBITION ON EVASIONS, STRUCTURING OF
21 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A
22 creditor may not take any action in connection with a
23 high-cost mortgage—

24 “(1) to structure a loan transaction as an open-
25 end credit plan or another form of loan for the pur-

1 pose and with the intent of evading the provisions of
2 this title; or

3 “(2) to divide any loan transaction into sepa-
4 rate parts for the purpose and with the intent of
5 evading the provisions of this title.

6 “(q) MODIFICATION AND DEFERRAL FEES PROHIB-
7 ITED.—A creditor may not charge a consumer any fee to
8 modify, renew, extend, or amend a high-cost mortgage, or
9 to defer any payment due under the terms of such mort-
10 gage, unless the modification, renewal, extension, or
11 amendment results in a lower annual percentage rate on
12 the mortgage for the consumer, and then only if the fee
13 is bona fide and reasonable.

14 “(r) NET TANGIBLE BENEFIT.—In accordance with
15 regulations prescribed by the Board, no originator may
16 make, provide, or arrange a high-cost mortgage loan that
17 involves a refinancing of a prior existing home mortgage
18 loan, unless the new loan will provide a net tangible ben-
19 efit to the consumer.”.

1 **TITLE II—PROTECTIONS APPLI-**
2 **CABLE TO SUBPRIME AND**
3 **CERTAIN OTHER LOANS**

4 **SEC. 201. TRUTH IN LENDING ACT AMENDMENTS.**

5 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
6 is amended by inserting after section 129 the following
7 new section:

8 **“SEC. 129A. PROTECTIONS FOR SUBPRIME AND NONTRADI-**
9 **TIONAL HOME LOANS.**

10 **“(a) ASSESSMENT OF ABILITY TO PAY.—**

11 **“(1) IN GENERAL.—**

12 **“(A) IN GENERAL.—**Before entering into
13 or otherwise facilitating a subprime or nontradi-
14 tional mortgage loan, each mortgage originator
15 shall verify the reasonable ability of the bor-
16 rower to pay the principal and interest on the
17 loan and any real estate taxes and homeowner
18 insurance fees and premiums.

19 **“(B) CONSIDERATIONS.—**A determination
20 under subparagraph (A) shall include consider-
21 ation of—

22 **“(i) the income of the borrower;**

23 **“(ii) the credit history of the bor-**
24 **rower;**

1 “(iii) the current obligations and em-
2 ployment status of the borrower;

3 “(iv) the debt-to-income ratio of the
4 monthly gross income of the borrower, in-
5 clusive of all scheduled or otherwise signifi-
6 cant debt payments and total monthly
7 housing payments, including taxes, prop-
8 erty and private mortgage insurance, any
9 required homeowner or condominium fees,
10 and any subordinate mortgages, including
11 those that will be made contemporaneously
12 to the same borrower;

13 “(v) the residual income of the bor-
14 rower; and

15 “(vi) other available financial re-
16 sources, other than the equity of the bor-
17 rower in the principal dwelling that secures
18 or would secure the loan.

19 “(2) VARIABLE MORTGAGE RATES.—In the case
20 of a subprime or nontraditional mortgage loan, with
21 respect to which the applicable rate of interest may
22 vary, for purposes of paragraph (1), the ability to
23 pay shall be determined based on the monthly pay-
24 ment that could be due from the borrower, using as
25 assumptions—

1 “(A) the fully indexed interest rate;

2 “(B) a repayment schedule which achieves
3 full amortization over the life of the loan, as-
4 suming no default by the borrower;

5 “(C) for products that permit negative am-
6 ortization, the initial loan amount plus any bal-
7 ance increase that may accrue from the nega-
8 tive amortization provision;

9 “(D) that the loan is to be repaid in sub-
10 stantially equal monthly amortizing payments
11 for principal and interest over that period of
12 time which would be permitted after the con-
13 sumer has made lower payments, as permitted
14 under the terms of the loan, and which includes
15 any additions to principal that will result from
16 such permitted lower payments, with no balloon
17 payment, unless the loan contract requires a
18 more rapid repayment schedule to be used in
19 the calculation; and

20 “(E) the reasonably foreseeable capacity of
21 the borrower to make payments, assuming mar-
22 ket changes as to the contract index rate over
23 the period of the loan, using, to make such as-
24 sessment, a credible market rate determined ac-
25 cording to regulations issued by the Board,

1 which regulations shall require reasonable mar-
2 ket expectations to be a factor.

3 “(3) REBUTTABLE PRESUMPTION.—

4 “(A) IN GENERAL.—For purposes of this
5 subsection there is a rebuttable presumption
6 that a mortgage was made without regard to
7 repayment ability if, at the time at which the
8 loan was consummated, the total monthly debts
9 of the borrower, including total monthly hous-
10 ing payments, taxes, property, and private
11 mortgage insurance, any required homeowner or
12 condominium fees, and any subordinate mort-
13 gages, including those that will be made con-
14 temporaneously to the same borrower, exceed
15 45 percent of the monthly gross income of the
16 borrower.

17 “(B) REBUTTAL.—To rebut the presump-
18 tion of inability to repay under subparagraph
19 (A) the creditor shall, at minimum, determine
20 and consider the residual income of the bor-
21 rower after payment of current expenses and
22 proposed home loan payments, except that no
23 presumption of ability to make the scheduled
24 payments to repay the obligation shall arise
25 solely from the fact that, at the time at which

1 the loan is consummated, the total monthly
2 debts of the borrower (including amounts owed
3 under the loan) does not exceed 45 percent of
4 the monthly gross income of the borrower.

5 “(b) REQUIREMENT OF TAX AND INSURANCE ES-
6 CROWS.—No subprime or nontraditional mortgage loan
7 may be arranged, approved, or made without requiring es-
8 crow of tax and insurance installments calculated in ac-
9 cordance with the requirements of section 10 of the Real
10 Estate Settlement Procedures Act of 1974, and regula-
11 tions promulgated pursuant thereto, and mortgage insur-
12 ance premiums, if any.

13 “(c) PROHIBITION ON PREPAYMENT PENALTIES.—
14 No subprime or nontraditional mortgage loan may contain
15 a provision that requires a consumer to pay a penalty for
16 paying all or part of the principal before the date on which
17 it is due.

18 “(d) PROHIBITION ON YIELD-SPREAD PREMIUMS.—
19 No person may provide, and no mortgage originator may
20 receive, directly or indirectly, any compensation for origi-
21 nating a subprime or nontraditional mortgage loan that
22 is more costly than that for which the consumer qualifies,
23 or that is based on, or varies with, the terms (other than
24 the amount of loan principal) of any home mortgage loan.

25 “(e) NET TANGIBLE BENEFIT.—

1 “(1) IN GENERAL.—In accordance with regula-
2 tions prescribed by the Board, no originator may
3 make, provide, or arrange a subprime or nontradi-
4 tional mortgage loan that involves a refinancing of
5 a prior existing home mortgage loan, unless the new
6 loan will provide a net tangible benefit to the con-
7 sumer.

8 “(2) CERTAIN LOANS PROVIDING NO NET TAN-
9 GIBLE BENEFIT.—For purposes of paragraph (1), a
10 mortgage loan that involves refinancing of a prior
11 existing mortgage loan shall not be considered to
12 provide a net tangible benefit to the borrower if the
13 costs of the refinanced loan, including points, fees,
14 and other charges, exceed the amount of any newly
15 advanced principal, less the points, fees, and other
16 charges, without any corresponding changes in the
17 terms of the refinanced loan that are advantageous
18 to the borrower.”.

19 **TITLE III—PROTECTIONS FOR**
20 **ALL HOME LOAN BORROWERS**

21 **SEC. 301. MORTGAGE PROTECTIONS.**

22 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
23 is amended by inserting after section 129A, as added by
24 this Act, the following new section:

1 **“SEC. 129B. PROTECTIONS FOR ALL HOME LOANS.**

2 “(a) DUTIES OF ALL MORTGAGE ORIGINATORS.—

3 Each mortgage originator shall, with respect to each home
4 mortgage loan and, in addition to requirements under
5 other applicable provisions of Federal or State law—

6 “(1) safeguard and account for any money han-
7 dled for the borrower;

8 “(2) follow reasonable and lawful instructions
9 from the borrower;

10 “(3) act with reasonable skill, care, and dili-
11 gence;

12 “(4) act in good faith and with fair dealing in
13 any transaction, practice, or course of business in
14 connection with the originating of any home mort-
15 gage loan; and

16 “(5) make reasonable efforts to secure a home
17 mortgage loan that is appropriately advantageous to
18 the borrower, considering all of the circumstances,
19 including the product type, rates, charges, and re-
20 payment terms of the loan.

21 “(b) DUTIES OF MORTGAGE BROKERS.—Each mort-
22 gage broker shall with respect to each home mortgage loan
23 be deemed to have a fiduciary relationship with the bor-
24 rower, and, in addition to duties imposed by other applica-
25 ble provisions of Federal or State law, shall—

1 “(1) act in the best interest of the borrower and
2 in the utmost good faith toward the borrower, and
3 refrain from compromising the rights or interests of
4 the borrower in favor of the rights or interests of an-
5 other, including a right or interest of the mortgage
6 broker; and

7 “(2) clearly disclose to the borrower, not later
8 than 3 days after receipt of the loan application, all
9 material information that might reasonably affect
10 the rights, interests, or ability of the borrower to re-
11 ceive the borrower’s intended benefit from the home
12 mortgage loan, including total compensation that the
13 broker would receive from any of the loan options
14 that the broker presents to the borrower.

15 “(c) PROHIBITION ON STEERING.—

16 “(1) IN GENERAL.—In connection with a home
17 mortgage loan, a mortgage originator may not steer,
18 counsel, or direct a consumer to a loan with rates,
19 charges, principal amount, or prepayment terms that
20 are more costly than that for which the consumer
21 qualifies.

22 “(2) DUTIES TO CONSUMERS.—If unable to
23 suggest, offer, or recommend to a consumer a home
24 mortgage loan that is not more expensive than that

1 for which the consumer qualifies, a mortgage origi-
2 nator shall disclose to the consumer—

3 “(A) that the creditor does not offer a
4 home mortgage loan that is not more expensive
5 than that for which the consumer qualifies, but
6 that other creditors may offer such a loan; and

7 “(B) the reasons that the products and
8 services offered by the mortgage originator are
9 not available to or reasonably advantageous for
10 the consumer.

11 “(3) PROHIBITED CONDUCT.—In connection
12 with a home mortgage loan, a mortgage originator
13 may not—

14 “(A) mischaracterize the credit history of a
15 consumer or the home loans available to a con-
16 sumer;

17 “(B) mischaracterize or suborn
18 mischaracterization of the appraised value of
19 the property securing the extension of credit;
20 and

21 “(C) if unable to suggest, offer, or rec-
22 ommend to a consumer a loan that is not more
23 expensive than that for which the consumer
24 qualifies, discourage a consumer from seeking a

1 home mortgage loan from another creditor or
2 with another mortgage originator.

3 “(d) REQUIRED DOCUMENTATION.—

4 “(1) IN GENERAL.—With respect to any home
5 mortgage loan, a mortgage originator shall base its
6 determination of the ability of a consumer to pay
7 on—

8 “(A) documentation of all sources of in-
9 come verified by tax returns, payroll receipts,
10 bank records, or the best and most appropriate
11 form of documentation available, subject to
12 such requirements and exceptions as deter-
13 mined appropriate by the Board; and

14 “(B) the debt-to-income ratio and the re-
15 sidual income of the consumer after payment of
16 current expenses and proposed home loan pay-
17 ments.

18 “(2) LIMITATION.—A statement provided by a
19 consumer of the income and financial resources of
20 the consumer, without other documentation referred
21 to in paragraph (1), is not sufficient verification for
22 purposes of assessing the ability of the consumer to
23 pay.

24 “(e) LIMITATIONS ON YIELD-SPREAD PREMIUMS.—

1 “(1) IN GENERAL.—Except as provided in para-
2 graph (2), no person may provide, and no mortgage
3 originator may receive, directly or indirectly, any
4 compensation for originating a home mortgage loan
5 that is more costly than that for which the consumer
6 qualifies, or that is based on, or varies with, the
7 terms of any home mortgage loan (other than the
8 amount of loan principal).

9 “(2) LIMITED EXCEPTION FOR NO-COST
10 LOANS.—Notwithstanding paragraph (1), in a home
11 mortgage loan, other than a high-cost mortgage
12 loan, a subprime mortgage loan, or a nontraditional
13 mortgage loan, a mortgage broker may receive com-
14 pensation in the form of an increased rate, but only
15 if—

16 “(A) the mortgage broker receives no other
17 compensation, however denominated, directly or
18 indirectly, from the consumer, creditor, or other
19 mortgage originator;

20 “(B) the loan does not include discount
21 points, origination points, or rate reduction
22 points, however denominated, or any payment
23 reduction fee, however denominated;

24 “(C) the loan does not include a prepay-
25 ment penalty; and

1 “(D) there are no other closing costs asso-
2 ciated with the loan, except for fees to govern-
3 ment officials or amounts to fund escrow ac-
4 counts for taxes and insurance.

5 “(f) RECOMMENDED DEFAULT.—No creditor shall
6 recommend or encourage default on an existing loan or
7 other debt prior to and in connection with the closing or
8 planned closing of a mortgage loan that refinances all or
9 any portion of such existing loan or debt.

10 “(g) EFFECT OF FORECLOSURE ON PREEXISTING
11 LEASE.—

12 “(1) IN GENERAL.—Notwithstanding any other
13 provision of law, in the case of any foreclosure with
14 respect to a home mortgage loan entered into after
15 the date of enactment of this Act, any successor in
16 interest in such property pursuant to the foreclosure
17 shall assume such interest subject to—

18 “(A) the provision, by the successor in in-
19 terest, of a notice to vacate to any bona fide
20 tenant at least 90 days before the effective date
21 of the notice to vacate; and

22 “(B) the rights of any bona fide tenant, as
23 of the date of such notice of foreclosure—

24 “(i) under any bona fide lease entered
25 into before the notice of foreclosure to oc-

1 copy the premises until the end of the re-
2 maining term of the lease; or

3 “(ii) without a lease or with a lease
4 terminable at will under State law, subject
5 to the receipt by the tenant of the 90-day
6 notice under subparagraph (A).

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

10 “(A) the mortgagor under the contract is
11 not the tenant;

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

14 “(C) the lease or tenancy requires the re-
15 ceipt of rent that is not substantially less than
16 fair market rent for the property.”.

17 **TITLE IV—GOOD FAITH AND**
18 **FAIR DEALING IN APPRAISALS**

19 **SEC. 401. DUTIES OF APPRAISERS.**

20 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
21 is amended by inserting after section 129B, as added by
22 this Act, the following new section:

23 **“SEC. 129C. DUTIES OF APPRAISERS.**

24 “(a) DEFINITIONS.—In this section, the following
25 definitions shall apply:

1 “(1) APPRAISER.—The term ‘appraiser’ means
2 a person who—

3 “(A) is certified or licensed by the State in
4 which the property to be appraised is located;
5 and

6 “(B) performs each appraisal in con-
7 formity with the Uniform Standards of Profes-
8 sional Appraisal Practice and title XI of the Fi-
9 nancial Institutions Reform, Recovery, and En-
10 forcement Act of 1989, and the regulations pre-
11 scribed under such title, as in effect on the date
12 of the appraisal.

13 “(2) QUALIFYING BOND.—The term ‘qualifying
14 bond’ means a bond equal to not less than 1 percent
15 of the aggregate value of all homes appraised by an
16 appraiser of real property in connection with a home
17 mortgage loan in the calendar year preceding the
18 date of the transaction, with respect to which—

19 “(A) the bond shall inure first to the ben-
20 efit of the homeowners who have claims against
21 the appraiser under this title or any other ap-
22 plicable provision of law, and second to the ben-
23 efit of originating creditors that complied with
24 their duty of good faith and fair dealing in ac-
25 cordance with this title; and

1 “(B) any assignee or subsequent transferee
2 or trustee shall be a beneficiary of the bond,
3 only if the originating creditor qualified for
4 such treatment.

5 “(b) STANDARD OF CARE.—Each appraiser shall, in
6 addition to the duties imposed by otherwise applicable pro-
7 visions of Federal or State law, with respect to each home
8 mortgage loan in which the appraiser is involved—

9 “(1) act with reasonable skill, care, diligence,
10 and in accordance with the highest standards; and

11 “(2) act in good faith and with fair dealing in
12 any transaction, practice, or course of business asso-
13 ciated with the transaction.

14 “(c) DUTIES OF APPRAISERS.—

15 “(1) OBJECTIVE APPRAISALS.—All appraisals
16 carried out by an appraiser shall be accurate and
17 reasonable. An appraiser shall have no direct or indi-
18 rect interest in the property to be appraised, the real
19 estate transaction prompting such appraisal, or the
20 home loan involved in such transaction.

21 “(2) BOND REQUIREMENT.—No appraiser may
22 charge, seek, or receive compensation for an ap-
23 praisal unless the appraisal is covered by a quali-
24 fying bond.

1 “(3) NO TARGET VALUES.—No lender or loan
2 servicer may, with respect to a home mortgage loan,
3 in any way—

4 “(A) seek to influence an appraiser or oth-
5 erwise to encourage a targeted value in order to
6 facilitate the making or pricing of the home
7 mortgage loan; or

8 “(B) select an appraiser on the basis of an
9 expectation that such appraiser would provide a
10 targeted value in order to facilitate the making
11 or pricing of the home mortgage loan.

12 “(4) PROHIBITION ON CERTAIN DISCLO-
13 SURES.—Neither the appraisal order nor any other
14 communication in any form by an appraiser may in-
15 clude the requested loan amount or any estimate of
16 value for the property to serve as collateral, either
17 express or implied.

18 “(d) APPRAISAL REPORT.—In any case in which an
19 appraisal is performed in connection with a home mort-
20 gage loan, the lender or loan servicer shall provide a copy
21 of the appraisal report to an applicant for a home mort-
22 gage loan, whether credit is granted, denied, or the appli-
23 cation was withdrawn. The first copy of this report shall
24 be provided to the applicant without charge.

1 “(e) REMEDIES.—In addition to other remedies, in
2 any action for a violation of this section, the following
3 shall apply:

4 “(1) REQUIRED MODIFICATION.—If a retrospec-
5 tive appraisal determines that the appraisal upon
6 which the home loan was based exceeded the true
7 market value by 10 percent or more, the holder of
8 the loan shall modify the loan and recast the loan
9 ab initio to a loan amount that is at the same loan-
10 to-value which the original loan purported to be. All
11 payments made prior to the recasting of such loan
12 shall be applied to the reduced loan amount.

13 “(2) AGENCY ABILITY TO MODIFY TRUE VALUE
14 TOLERANCE LEVEL.—If a consumer has a right of
15 action or a defense against the holder of the home
16 loan when the appraisal upon which the home loan
17 was based exceeds the true market value of the
18 home by 10 percent or more, the regulatory agency
19 which oversees appraisers in the jurisdiction in
20 which the collateral is located has the authority to
21 issue rules which permit the 10 percent tolerance
22 level established in this paragraph to deviate by no
23 more than 2 percent where local conditions warrant.

24 “(3) COLLECTION FROM APPRAISER’S QUALI-
25 FYING BOND.—A consumer awarded remedies pursu-

1 ant to this section shall have the right to collect
2 such remedies from the appraiser's qualifying bond.

3 “(f) CIVIL LIABILITY.—

4 “(1) IN GENERAL.—Any appraiser who fails to
5 comply with any requirement of this section with re-
6 spect to a borrower designated in a home mortgage
7 loan contract, is liable to such borrower in an
8 amount equal to the sum of—

9 “(A) any actual damages sustained by
10 such borrower as a result of the failure;

11 “(B) an amount not less than \$5,000; or

12 “(C) in the case of any successful action to
13 enforce the foregoing liability, the costs of the
14 action, together with a reasonable attorney's fee
15 as determined by the court.

16 “(2) JURISDICTION.—Any action by a borrower
17 for a failure to comply with the requirements of this
18 section may be brought in any United States district
19 court, or in any other court of competent jurisdic-
20 tion, not later than 3 years from the date of the oc-
21 currence of such violation. This subsection does not
22 bar a person from asserting a violation of this sec-
23 tion in an action to collect the debt owed on a home
24 mortgage loan, or foreclose upon the home securing
25 a home mortgage loan, or to stop a foreclosure upon

1 that home, which was brought more than 3 years
 2 after the date of the occurrence of the violation as
 3 a matter of defense by recoupment or set-off in such
 4 action. An action under this section does not create
 5 an independent basis for removal of an action to a
 6 United States district court.

7 “(3) STATE ATTORNEY GENERAL ENFORCE-
 8 MENT.—An action to enforce a violation of this sec-
 9 tion may also be brought by the appropriate State
 10 attorney general in any appropriate United States
 11 district court, or any other court of competent juris-
 12 diction, not later than 3 years after the date on
 13 which the violation occurs. An action under this sec-
 14 tion does not create an independent basis for re-
 15 moval of an action to a United States district
 16 court.”.

17 **TITLE V—GOOD FAITH AND FAIR**
 18 **DEALING IN HOME LOAN**
 19 **SERVICING**

20 **SEC. 501. DUTIES OF LENDERS AND LOAN SERVICERS.**

21 The Truth in Lending Act (15 U.S.C. 1601 et seq.)
 22 is amended by inserting after section 129C, as added by
 23 this Act, the following new section:

24 **“SEC. 129D. DUTIES OF LENDERS AND LOAN SERVICERS.**

25 “(a) STANDARD OF CARE.—

1 “(1) AGENCY RELATIONSHIP.—In the case of
2 any home loan serviced by a loan servicer on behalf
3 of a lender, the loan servicer shall be deemed an
4 agent of that lender, and shall be subject to all re-
5 quirements of agents otherwise applicable under
6 Federal or State law.

7 “(2) FAIR DEALING.—Each lender and loan
8 servicer shall, in addition to the duties imposed by
9 otherwise applicable provisions of Federal or State
10 law, with respect to each home mortgage loan, in-
11 cluding any home mortgage loan in default or in
12 which the homeowner has filed for bankruptcy—

13 “(A) act with reasonable skill, care, dili-
14 gence, and in accordance with the highest
15 standards; and

16 “(B) act in good faith and with fair deal-
17 ing in any transaction, practice, or course of
18 business associated with the home mortgage
19 loan.

20 “(b) RULES FOR ASSESSMENT OF FEE.—

21 “(1) IN GENERAL.—No home mortgage loan
22 contract may require, nor may any lender or loan
23 servicer assess or receive, any fees or charges other
24 than interest, late fees as specifically authorized in
25 this section, or fees assessed for nonsufficient funds,

1 and charges allowed pursuant to subsection
2 (i)(1)(B), until the home mortgage loan is the sub-
3 ject of a foreclosure proceeding and the debt on such
4 loan has been accelerated.

5 “(2) FEE LIMITATIONS.—Any permissible fee or
6 charge described under paragraph (1) shall be—

7 “(A) reasonable;

8 “(B) for services actually rendered; and

9 “(C) specifically authorized by the terms of
10 the home mortgage loan contract and State law.

11 “(3) ASSESSMENT AND DISCLOSURE.—

12 “(A) IN GENERAL.—Any permissible fee or
13 charge described under paragraph (1) shall
14 be—

15 “(i) assessed not later than 30 days
16 after the date on which the fee was ac-
17 crued; and

18 “(ii) explained clearly and conspicu-
19 ously in the next monthly accounting state-
20 ment provided to the borrower designated
21 in the home mortgage loan contract.

22 “(B) FAILURE TO COMPLY.—Failure by a
23 lender or loan servicer to comply with the re-
24 quirements set forth under subparagraph (A)
25 shall result in the waiver of the fee.

1 “(4) REQUIRED STATEMENTS.—Each month a
2 lender or loan servicer shall provide to each borrower
3 designated in a home mortgage loan contract en-
4 tered into by such lender or loan servicer a periodic
5 statement that clearly and in plain english ex-
6 plains—

7 “(A) the application of the prior month’s
8 payment by the borrower, including the alloca-
9 tion of the payment to interest, principal, es-
10 crow, and fees;

11 “(B) the status of the escrow account held
12 on behalf of the borrower, including the pay-
13 ments into and from the escrow account; and

14 “(C) the assessment of fees accruing in the
15 previous month, including the reason that such
16 fee accrued and the date such fee accrued.

17 “(c) MAXIMUM ALLOWABLE LATE FEES CHARGED
18 AFTER LOAN CLOSING.—

19 “(1) IN GENERAL.—No lender or loan servicer
20 may impose a charge or fee for late payment of any
21 amount due on a home mortgage loan—

22 “(A) unless the home mortgage loan con-
23 tract specifically authorizes the charge or fee;

24 “(B) in an amount in excess of 5 percent
25 of the amount of the payment past due;

1 “(C) before the end of the 15-day period
2 after the date the payment is due, or in the
3 case of a home mortgage loan on which interest
4 on each installment is paid in advance, before
5 the end of the 30-day period after the date the
6 payment is due; or

7 “(D) more than once with respect to a sin-
8 gle late payment.

9 “(2) RULE OF CONSTRUCTION.—For purposes
10 of this subsection, payments on any amount due on
11 a home mortgage loan shall be applied first to cur-
12 rent installments, then to delinquent payments, and
13 then to delinquency charges.

14 “(3) COORDINATION WITH SUBSEQUENT LATE
15 FEES.—If a home loan mortgage payment is other-
16 wise a full payment for the applicable period and is
17 paid on its due date or within an applicable grace
18 period, and the only delinquency or insufficiency of
19 payment is attributable to a late fee or delinquency
20 charge assessed on an earlier payment, no late fee
21 or delinquency charge may be imposed on such pay-
22 ment.

23 “(d) PROMPT CREDITING OF PAYMENTS RE-
24 QUIRED.—Each home loan mortgage payment amount re-
25 ceived by a lender or a loan servicer shall be accepted and

1 credited on the date received. Such payments shall be
2 credited to interest and principal due on the home mort-
3 gage loan before crediting the payment to taxes, insur-
4 ance, or fees.

5 “(e) COLLATERAL PROTECTION INSURANCE.—

6 “(1) IN GENERAL.—A lender or loan servicer
7 may not charge any borrower designated in a home
8 mortgage loan contract for collateral protection in-
9 surance, unless—

10 “(A) the home mortgage loan contract re-
11 quires the borrower to maintain insurance on
12 the collateral and clearly delineates—

13 “(i) the terms and conditions for im-
14 position of and payment of the collateral;

15 “(ii) that such insurance may not pro-
16 tect the interests of the borrower and may
17 be substantially more expensive than insur-
18 ance that the borrower could purchase
19 independently; and

20 “(iii) that the borrower will be
21 charged for the cost of the insurance;

22 “(B) the lender or loan servicer makes
23 every effort to avoid the necessity of requiring
24 collateral protection insurance, including at
25 least written notice and telephone communica-

1 tions with the borrower and the insurance agent
2 of record regarding the—

3 “(i) obligation of the borrower to
4 maintain property insurance; and

5 “(ii) additional cost to the borrower
6 on a monthly basis if collateral protection
7 insurance is required;

8 “(C) clear notice is received by the bor-
9 rower at least 15 days in advance of the charge
10 for collateral protection insurance, including—

11 “(i) notice that the—

12 “(I) placement of the insurance
13 is imminent;

14 “(II) costs of the insurance will
15 be paid by the borrower; and

16 “(III) the insurance will not pro-
17 tect the borrower from loss;

18 “(ii) notice of the amount of the new
19 monthly payment; and

20 “(iii) instructions on the steps that
21 the borrower may take to avoid such
22 charge; and

23 “(D) charges for such insurance are bona
24 fide and reasonable.

1 “(2) PROHIBITION.—In no event is collateral
2 protection insurance permitted when a lender or loan
3 servicer is collecting fees in escrow from the bor-
4 rower for the payment of property taxes and insur-
5 ance, unless the borrower has had his or her insur-
6 ance cancelled for some reason other than non-pay-
7 ment of the premium.

8 “(3) NOTICE OF CHARGE.—After a charge for
9 the purchase of collateral protection insurance has
10 been issued by a lender or loan servicer, notice of
11 the new monthly payment requirements shall be de-
12 livered to the borrower at least 15 days prior to the
13 first increased payment—

14 “(A) explaining the imposition of the new
15 charges for such insurance; and

16 “(B) providing information on what the
17 borrower can do to obviate the need for such in-
18 surance.

19 “(f) OBLIGATIONS OF LENDER OR LOAN SERVICER
20 TO HANDLE ESCROW FUNDS.—A lender or loan servicer
21 shall make all payments from the escrow account held for
22 the borrower designated in a home mortgage loan contract
23 for insurance, taxes, and other charges with respect to the
24 property secured by such contract in a timely manner to
25 ensure that no late penalties are assessed and that no

1 other negative consequences result, regardless of whether
2 the loan is delinquent, unless—

3 “(1) there are not sufficient funds in the ac-
4 count of such borrower to cover the payments; and

5 “(2) the lender or loan servicer has a reason-
6 able basis to believe that recovery of the funds will
7 not be possible.

8 “(g) INFORMATION EXCHANGE AND DISPUTE RE-
9 QUIREMENTS.—

10 “(1) MANDATORY RESPONSE TO BORROWERS’
11 REQUESTS.—

12 “(A) IN GENERAL.—A lender or loan
13 servicer shall respond to any request for infor-
14 mation about a home mortgage loan or for reso-
15 lution of any dispute involving a home mortgage
16 loan submitted by a borrower designated in a
17 home mortgage loan contract entered into by
18 such lender or loan servicer.

19 “(B) TIMING OR RESPONSE.—A response
20 required under subparagraph shall occur—

21 “(i) without cost to the requesting
22 borrower; and

23 “(ii) not later than 10 days after the
24 receipt of such request.

1 “(C) SCOPE OF OBLIGATION.—The scope
2 of the response requirement set forth in sub-
3 paragraph (A), includes—

4 “(i) providing—

5 “(I) the status of the borrowers
6 account, including whether the ac-
7 count is current, or if not, the date
8 the account went into default;

9 “(II) the current balance due on
10 the home mortgage loan of the bor-
11 rower, including the principal due, an
12 explanation of the escrow balance, and
13 whether there are any escrow defi-
14 ciencies or shortages;

15 “(III) a full payment history of
16 the borrower, which shows in a clear
17 and easily understandable manner all
18 of the activity on the home mortgage
19 loan of the borrower since the origina-
20 tion of the loan, including the escrow
21 account and the application of pay-
22 ments; and

23 “(IV) a copy of the original note
24 and security instrument;

1 “(ii) correcting errors relating to the
2 allocation of payments made by the bor-
3 rower, final balances for purposes of pay-
4 ing off the loan or avoiding foreclosure,
5 and other lender or loan servicer obliga-
6 tions;

7 “(iii) providing the identity, address,
8 and other relevant information about the
9 owner or assignee of the home mortgage
10 loan; and

11 “(iv) providing a telephone number on
12 each regular account statement that gives
13 the borrower access to a live person with
14 the information and authority to answer
15 questions and resolve issues.

16 “(2) NO SHARING OF INFORMATION.—During
17 the 90-day period beginning on the date of the re-
18 ceipt of a request from a borrower under paragraph
19 (1), a lender or loan servicer may not provide infor-
20 mation to any reporting agency regarding any over-
21 due payment, or other default on the home mortgage
22 loan, by such borrower to any consumer reporting
23 agency (as such term is defined in section 603(f) of
24 the Fair Credit Reporting Act).

1 “(3) MAINTENANCE OF RECORDS.—A lender or
2 loan servicer shall maintain written and electronic
3 records of the handling of any oral request made by
4 a borrower under this subsection.

5 “(h) MANDATORY LOSS MITIGATION.—

6 “(1) IN GENERAL.—A lender or loan servicer
7 shall not initiate a foreclosure of a home mortgage
8 loan unless that lender or loan servicer has made a
9 good faith review of the financial situation of the
10 borrower designated in such home mortgage loan
11 contract and has offered, whenever feasible, a repay-
12 ment plan, forbearance, loan modification, or other
13 option to assist the borrower in bringing his or her
14 delinquent account into arrears. In the event that
15 such options are not feasible, the lender or loan
16 servicer shall refer the borrower to a housing coun-
17 seling agency approved by the Secretary of Housing
18 and Urban Development under section 106(d) of the
19 Housing and Urban Development Act of 1968 (12
20 U.S.C. 1701x(d)).

21 “(2) REPORTS ON LOSS MITIGATION ACTIVI-
22 TIES.—

23 “(A) IN GENERAL.—Each servicer shall re-
24 port to the Board once every 3 months on the

1 extent and results of its loss mitigation activi-
2 ties.

3 “(B) FORM AND CONTENT.—The Board
4 shall prescribe, by regulation, the form and con-
5 tent of the reports required by this paragraph
6 which shall include—

7 “(i) categories of measures that result
8 in modifications of loan provisions, includ-
9 ing payment schedules, loan principle, and
10 loan interest;

11 “(ii) forbearance agreements;

12 “(iii) acceptance of a reduced amount
13 in satisfaction of the loan;

14 “(iv) assumption of the loan;

15 “(v) pre-foreclosure sales; and

16 “(vi) deeds in lieu of foreclosure, and
17 foreclosures.

18 “(C) BASIS.—Data required by this para-
19 graph shall be reported on a servicer and lender
20 basis.

21 “(D) PUBLIC AVAILABILITY.—The Board
22 shall make data received under this paragraph
23 publicly available, and shall annually report to
24 Congress on servicer loss mitigation activities.

1 “(3) FAILURE TO COMPLY.—Failure by a lend-
2 er or loan servicer to comply with the requirements
3 under paragraph (1) shall constitute a defense to
4 any foreclosure.

5 “(i) PAYOFF STATEMENTS.—

6 “(1) PROHIBITION ON FEES.—

7 “(A) IN GENERAL.—No lender or loan
8 servicer (or any third party acting on behalf of
9 such lender or loan servicer) may charge a fee
10 for transmitting to any borrower the amount
11 due to pay off the outstanding balance on the
12 home mortgage loan of such borrower.

13 “(B) EXCEPTION.—After a lender or loan
14 servicer (or any third party acting on behalf of
15 such lender or loan servicer) has provided the
16 information described in subparagraph (A)
17 without charge on 4 occasions during a cal-
18 endar year, the lender or loan servicer (or any
19 third party acting on behalf of such lender or
20 loan servicer) may thereafter charge a reason-
21 able fee for providing such information during
22 the remainder of the calendar year.

23 “(2) TIMING.—The information described in
24 subparagraph (A) shall be provided to the borrower
25 within a reasonable period of time but in any event

1 not more than 5 business days after the receipt of
2 the request by the lender or loan servicer.

3 “(j) CIVIL LIABILITY.—

4 “(1) IN GENERAL.—Any lender or loan servicer
5 who fails to comply with any requirement of this sec-
6 tion with respect to a borrower designated in a home
7 mortgage loan contract, is liable to such borrower in
8 an amount equal to the sum of—

9 “(A) any actual damages sustained by
10 such borrower as a result of the failure;

11 “(B) an amount not less than \$5,000; or

12 “(C) in the case of any successful action to
13 enforce the foregoing liability the costs of the
14 action, together with a reasonable attorney’s fee
15 as determined by the court.

16 “(2) JURISDICTION.—Any action by a borrower
17 for a failure to comply with the requirements of this
18 section may be brought in any United States district
19 court, or in any other court of competent jurisdic-
20 tion, not later than 3 years from the date of the oc-
21 currence of such violation. This subsection does not
22 bar a person from asserting a violation of this sec-
23 tion in an action by a lender or loan servicer to col-
24 lect the debt owed on a home mortgage loan, or fore-
25 close upon the home securing a home mortgage loan,

1 or to stop a foreclosure upon that home, which was
2 brought more than 3 years after the date of the oc-
3 currence of the violation as a matter of defense by
4 recoupment or set-off in such action. An action
5 under this section does not create an independent
6 basis for removal of an action to a United States
7 district court.

8 “(3) STATE ATTORNEY GENERAL ENFORCE-
9 MENT.—An action to enforce a violation of this sec-
10 tion may also be brought by the appropriate State
11 attorney general in any appropriate United States
12 district court, or any other court of competent juris-
13 diction, not later than 3 years after the date on
14 which the violation occurs. An action under this sec-
15 tion does not create an independent basis for re-
16 moval of an action to a United States district court.

17 “(k) DEFINITIONS.—In this section, the following
18 definitions shall apply:

19 “(1) LENDER.—The term ‘lender’ has the same
20 meaning as in section 3500.2 of title 24, Code of
21 Federal Regulations, as in effect on the date of en-
22 actment of this section.

23 “(2) LOAN SERVICER.—The term ‘loan servicer’
24 has the same meaning as the term ‘servicer’ in sec-

1 tion 6(i)(2) of the Real Estate Settlement Proce-
2 dures Act of 1974 (12 U.S.C. 2605(i)(2)).”.

3 **SEC. 502. REAL ESTATE SETTLEMENT PROCEDURES.**

4 Section 6(b)(3) of the Real Estate Settlement Proce-
5 dures Act of 1974 (12 U.S.C. 2605(b)(3)) is amended by
6 adding at the end the following new subparagraph:

7 “(H) A statement explaining—

8 “(i) whether the account of the bor-
9 rower is current, or if the account is not
10 current, an explanation of the reason and
11 date the account went into default;

12 “(ii) the current balance due on the
13 loan, including the principal due, an expla-
14 nation of the escrow balance, and whether
15 there are any escrow deficiencies or short-
16 ages; and

17 “(iii) a full payment history of the
18 borrower which shows in a clear and easily
19 understandable manner, all of the activity
20 on the home mortgage loan since the origi-
21 nation of the loan or the prior transfer of
22 servicing, including the escrow account,
23 and the application of payments.”.

1 **SEC. 503. EFFECTIVE DATE.**

2 This title and the amendments made by this title
3 shall become effective 90 days after the date of enactment
4 of this Act, and shall apply to loan servicers and loan serv-
5 icing activities on and after that effective date.

6 **TITLE VI—FORECLOSURE**
7 **PREVENTION COUNSELING**

8 **SEC. 601. FORECLOSURE PREVENTION COUNSELING.**

9 Section 106(d)(6) of the Housing and Urban Devel-
10 opment Act of 1968 (12 U.S.C. 1701x(d)(6)) is amended
11 to read as follows:

12 “(6) FORECLOSURE PREVENTION COUN-
13 SELING.—

14 “(A) NOTIFICATION AT TIME OF SETTLE-
15 MENT OF AVAILABILITY OF COUNSELING UPON
16 DELINQUENCY.—

17 “(i) IN GENERAL.—At the time of set-
18 tlement of any real estate transaction in-
19 volving a qualified mortgage, and together
20 with the final signed loan documents, a
21 lender or loan servicer shall provide to
22 each eligible homeowner a plain language
23 statement in conspicuous 16-point type or
24 larger which shall include the following:

1 “(I) COUNSELING STATEMENT.—

2 A counseling statement that reads as
3 follows:

4 ‘If you are more than 30 days late on your
5 mortgage payments, your lender or loan
6 servicer shall notify you of housing coun-
7 seling agencies approved by the Secretary
8 of Housing and Urban Development that
9 may be able to assist you. Before you miss
10 another mortgage payment, you are
11 strongly encouraged to contact your lender
12 or loan servicer or 1 of these agencies for
13 assistance. If you are more than 60 days
14 late on your mortgage payments, your
15 lender or loan servicer shall send you a
16 second notification containing this infor-
17 mation. In addition, if you are more than
18 60 days late on your mortgage payment,
19 your lender or loan servicer shall notify an
20 approved housing counseling agency so
21 that such agency can contact you regard-
22 ing any assistance it may be able to pro-
23 vide.

24 ‘You can also choose a housing counseling
25 agency from the list provided with this

1 statement to assist you. By calling 1 of
2 these approved housing counseling agencies
3 and signing an authorization form, your
4 agency of choice will notify your lender or
5 loan servicer of your decision.’.

6 “(II) COUNSELING AGENCY LIST-
7 ING.—A listing of at least 5 national,
8 State and local housing counseling
9 agencies approved by the Secretary. It
10 is the responsibility of the lender or
11 loan servicer to ensure that—

12 “(aa) if fewer than 5 ap-
13 proved housing counseling agen-
14 cies serve the area where the eli-
15 gible homeowner is located, all
16 available housing counseling
17 agencies in that area shall be list-
18 ed; and

19 “(bb) the list shall include
20 options of housing counseling
21 agencies that provide in-person
22 counseling, as well as telephone
23 counseling.

24 “(ii) NOTICE.—Any notice required to
25 be sent pursuant to this subparagraph

1 shall be sent by first class mail to the last
2 known address of the eligible homeowner
3 and if different, to the residence which is
4 the subject of the mortgage. The notice
5 shall also be sent by registered or certified
6 mail.

7 “(B) NOTIFICATION OF AVAILABILITY OF
8 COUNSELING UPON DELINQUENCY AFTER 60
9 DAYS.—

10 “(i) IN GENERAL.—Before a lender or
11 loan servicer accelerates the maturity of a
12 mortgage obligation, commences legal ac-
13 tion, including mortgage foreclosure to re-
14 cover under the obligation, or takes posses-
15 sion of a security of the mortgage debtor
16 for the mortgage obligation, the lender or
17 loan servicer is required to give notice to
18 an eligible homeowner in conspicuous 16-
19 point type or larger which shall include the
20 following:

21 “(I) HOUSING COUNSELING IN-
22 FORMATION IN NOTICE FORECLOSURE
23 STATEMENT.—A foreclosure notice
24 that includes the following statement

1 (blank lines to be filled in by the lend-
2 er or loan servicer, as appropriate):

3 ‘This is an official notice that the mort-
4 gage on your home is in default, and the
5 lender intends to foreclose in _____ days.
6 The name, address, and phone number of
7 housing counseling agencies approved by
8 the Secretary of Housing and Urban De-
9 velopment serving your county are listed at
10 the end of this notice.

11 ‘In addition, your lender or loan servicer
12 shall notify such an approved housing
13 counseling agency of your default so that
14 such agency can contact you regarding any
15 assistance it may be able to provide. You
16 have the right to request that your lender
17 or loan servicer not share your information
18 with a housing counseling agency.

19 ‘You can also choose an approved housing
20 counseling agency from the list provided
21 with this notice to assist you. By calling
22 one of these approved housing counseling
23 agencies and signing an authorization
24 form, your agency of choice will notify your
25 lender or loan servicer of your decision.’

1 “(II) COUNSELING AGENCY LIST-
2 ING.—A listing of at least 5 State and
3 local housing counseling agencies ap-
4 proved by the Secretary. It is the re-
5 sponsibility of the lender or loan
6 servicer to ensure that—

7 “(aa) if fewer than 5 ap-
8 proved housing counseling agen-
9 cies serve the area where the eli-
10 gible homeowner is located, all
11 available housing counseling
12 agencies in that area shall be list-
13 ed; and

14 “(bb) the list shall include
15 options of housing counseling
16 agencies that provide in-person
17 counseling, as well as telephone
18 counseling.

19 “(ii) NOTICE.—Any notice required to
20 be sent pursuant to this subparagraph
21 shall be sent by first class mail to the last
22 known address of the eligible homeowner
23 and if different, to the residence which is
24 the subject of the mortgage. The notice

1 shall also be sent by registered or certified
2 mail

3 “(iii) TIMING.—Any notice required to
4 be sent pursuant to this subparagraph
5 shall be sent at such time as the eligible
6 homeowner is at least 60 days contrac-
7 tually delinquent in his or her mortgage
8 payments or is in violation of other provi-
9 sions of the mortgage.

10 “(iv) INCLUSION IN ALL FORE-
11 CLOSURE MAILINGS.—The foreclosure no-
12 tice and counseling agency listing required
13 under subclauses (I) and (II) of clause (i)
14 shall be included with all foreclosure mail-
15 ings sent to an eligible homeowner.

16 “(C) NO FORECLOSURE IF APPLICATION
17 FOR FORECLOSURE PREVENTION SERVICES.—A
18 lender or loan servicer shall not initiate or con-
19 tinue a foreclosure—

20 “(i) upon receipt of a written con-
21 firmation that an eligible homeowner has
22 engaged a housing counseling agency ap-
23 proved by the Secretary for the purposes of
24 receiving foreclosure prevention services
25 and assistance; and

1 “(ii) for the 45-day period beginning
2 on the date of receipt of such written con-
3 firmation.

4 “(D) DUTIES.—

5 “(i) DUTY OF LENDER OR SERVICER
6 TO FORWARD INFORMATION.—

7 “(I) IN GENERAL.—Each lender
8 or loan servicer shall forward the con-
9 tact information of each eligible home-
10 owner who has borrowed amounts
11 from such lender or loan servicer for
12 a qualified mortgage to a housing
13 counseling agency approved by the
14 Secretary in the event the mortgage
15 payment of that homeowner is or be-
16 comes more than 60 days late so that
17 the housing counseling agency can at-
18 tempt to reach the homeowner.

19 “(II) PRE-EXISTING RELATION-
20 SHIP.—In the case that an eligible
21 homeowner has a pre-existing rela-
22 tionship with a housing counseling
23 agency approved by the Secretary, or
24 a preference for one agency over an-

1 other, the homeowner may indicate as
2 such—

3 “(aa) at the time of settle-
4 ment of the real estate trans-
5 action involving a qualified mort-
6 gage issued to that homeowner;

7 “(bb) by providing written
8 correspondence to the lender or
9 loan servicer for such qualified
10 mortgage stating which housing
11 counseling agency the homeowner
12 would like to work with in case
13 the homeowner should become
14 delinquent in his or her mortgage
15 payments; or

16 “(cc) by signing an author-
17 ization form at the office of such
18 housing counseling agency of
19 choice, which form shall then be
20 sent to the lender or loan
21 servicer.

22 “(III) RULES OF CONSTRUC-
23 TION.—In order to carry out the pro-
24 visions of this paragraph, lenders and
25 loan servicers may form relationships

1 with housing counseling agencies ap-
2 proved by the Secretary to provide
3 services to eligible homeowners. Not-
4 withstanding the previous sentence,
5 exclusive relationships between any
6 such parties are strictly prohibited.

7 “(ii) AGENCY REPRESENTATION OF
8 HOMEOWNER.—When a housing counseling
9 agency provides a lender or loan servicer
10 with a signed authorization form to rep-
11 resent an eligible homeowner, the lender or
12 servicer shall respond to requests from
13 that agency for information within 3 days,
14 and to any workout proposals of that agen-
15 cy within 7 days. A lender or loan servicer
16 may not refuse to work with a housing
17 counselor from a housing counseling agen-
18 cy approved by the Secretary, if a signed
19 authorization form an eligible homeowner
20 has been received by that lender or loan
21 servicer (faxed, scanned, and other elec-
22 tronically reproduced authorizations of
23 such authorization form shall also be ac-
24 ceptable).

1 “(iii) REQUIRED DISCLOSURES TO
2 HOMEOWNER.—Each eligible homeowner
3 shall be informed at the time of settlement
4 of the real estate transaction involving a
5 qualified mortgage issued to that home-
6 owner that under this paragraph a housing
7 counseling agency may provide easier ac-
8 cess to assistance in case the homeowner
9 becomes delinquent on his or her mortgage
10 payments and that no information that
11 would make it possible to identify the
12 homeowner will be given to any other enti-
13 ty for any reason without the prior ap-
14 proval of the homeowner.

15 “(iv) REQUIRED RESOLUTIONS.—A
16 lender or loan servicer shall be required to
17 consider all loss mitigation resolutions for
18 each case of foreclosure initiated by the
19 lender or loan servicer, including the modi-
20 fication of a qualified mortgage to a more
21 permanent, affordable interest rate.

22 “(v) REQUIRED DISCLOSURES TO
23 HOUSING COUNSELING AGENCIES.—A lend-
24 er or loan servicer shall disclose to any
25 housing counseling agency approved by the

1 Secretary and authorized to represent an
2 eligible homeowner the name of the origi-
3 nator of the loans as stated in the Pooling
4 and Servicing Agreement, and the name of
5 the pool Trustee.

6 “(E) REIMBURSEMENTS FOR HOUSING
7 COUNSELING SERVICES.—

8 “(i) IN GENERAL.—A lender or loan
9 servicer of a qualified mortgage made to
10 an eligible homeowner shall reimburse the
11 housing counseling agency that is author-
12 ized to represent the homeowner upon the
13 rendering of services by such agency to the
14 homeowner under this paragraph.

15 “(ii) REIMBURSEMENT.—A lender or
16 loan servicer shall seek reimbursement for
17 the payment of housing counseling services
18 as described under clause (i) from the
19 Trust, if any, designated in the lender or
20 servicer’s Pooling and Servicing Agree-
21 ment.

22 “(F) AVAILABILITY OF WAIVER.—

23 “(i) IN GENERAL.—An eligible home-
24 owner may choose not to receive informa-
25 tion regarding State and local housing

1 counseling agencies approved by the Sec-
2 retary, or to have their information shared
3 with State and local housing counseling
4 agencies, or both, at any time after de-
5 fault. An eligible homeowner may also sub-
6 mit a signed letter to their lender or loan
7 servicer at any time after default to waive
8 their right to receive information regarding
9 State and local housing counseling agen-
10 cies.

11 “(ii) LIMITATION ON WAIVER.—The
12 waiver described under clause (i) shall only
13 apply to the receipt of information regard-
14 ing housing counseling agencies located in
15 the area where the homeowner is located or
16 the sharing of the homeowner’s personal
17 information with such agencies. The waiver
18 described under clause (i) shall not apply
19 to the right of the homeowner to seek fore-
20 closure prevention counseling, nor does it
21 relieve the lender or loan servicer of the re-
22 quirement to notify the homeowner of the
23 availability of counseling as described in
24 this section.

1 “(G) DEFINITIONS.—In this paragraph,
2 the following definitions shall apply:

3 “(i) LENDER.—The term ‘lender’ has
4 the same meaning as in section 3500.2 of
5 title 24, Code of Federal Regulations.

6 “(ii) LOAN SERVICER.—The term
7 ‘loan servicer’ has the same meaning as
8 the term ‘servicer’ as that term is defined
9 in section 6(i)(2) of the Real Estate Settle-
10 ment Procedures Act (12 U.S.C.
11 2605(i)(2)).”.

12 **TITLE VII—REMEDIES AND** 13 **ENFORCEMENT**

14 **SEC. 701. MATERIAL DISCLOSURES AND VIOLATIONS.**

15 (a) MATERIAL DISCLOSURES.—Section 103(u) of the
16 Truth in Lending Act (15 U.S.C. 1602(u)) is amended
17 by—

18 (1) striking “material disclosures” and insert-
19 ing “material disclosures or violations”; and

20 (2) striking “and the disclosures required by
21 section 129(a)” and inserting “and the provisions of
22 sections 129, 129A, and 129B.”.

23 (b) CONSEQUENCES OF FAILURE TO COMPLY.—Sec-
24 tion 129(j) of the Truth in Lending Act (15 U.S.C.

1 1639(j)) is amended by striking “contains a provision pro-
2 hibited by” and inserting “violates a provision of”.

3 **SEC. 702. RIGHT OF RESCISSION.**

4 (a) TIME LIMIT FOR EXERCISE OF RIGHT.—Section
5 125(f) of the Truth in Lending Act (15 U.S.C. 1635(f))
6 is amended by striking “An obligor’s right of rescission
7 shall expire three years after the date of consummation”
8 and inserting “An obligor’s right of rescission shall extend
9 to 6 years from the date of consummation”.

10 (b) ASSERTION OF RIGHT.—Section 130(e) of the
11 Truth in Lending Act (15 U.S.C. 1640(e)) is amended by
12 inserting after the second sentence the following new sen-
13 tence: “This subsection shall not bar a person from assert-
14 ing a right to rescission under section 125 in an action
15 to collect the debt or as a defense to a judicial foreclosure
16 or to stop a nonjudicial foreclosure after the expiration
17 of the time period set forth in section 125(f), but not ex-
18 ceed 10 years from the date of the consummation of the
19 transaction.”.

20 **SEC. 703. CIVIL LIABILITY.**

21 (a) IN GENERAL.—Section 130 of the Truth in Lend-
22 ing Act (15 U.S.C. 1640) is amended by—

23 (1) striking “creditor” and inserting “creditor
24 or mortgage broker” in each place that term ap-
25 pears;

1 (2) striking “CREDITOR” and inserting “CRED-
2 ITOR OR MORTGAGE BROKER” in each place that
3 term appears; and

4 (3) striking “creditor’s” and inserting “credi-
5 tor’s or mortgage broker’s” in each place that term
6 appears.

7 (b) STATUTE OF LIMITATIONS EXTENDED FOR SEC-
8 TION 129, 129A, OR 129B VIOLATIONS.—Section 130(e)
9 of the Truth in Lending Act (15 U.S.C. 1640(e)), as
10 amended by section 702(b), is further amended—

11 (1) in the first sentence, by striking “Any ac-
12 tion” and inserting “Except as otherwise provided in
13 this subsection, any action”;

14 (2) by inserting after the first sentence the fol-
15 lowing new sentence: “Any action under this section
16 with respect to any violation of section 129, 129A,
17 or 129B may be brought in any United States dis-
18 trict court, or in any other court of competent juris-
19 diction, within 3 years from the date of the occur-
20 rence of the violation.”; and

21 (3) in the fifth sentence (as so redesignated) by
22 striking “violation of section 129” and inserting
23 “violation of section 129, 129A, or 129B”.

24 (c) ENFORCEMENT BY STATE ATTORNEYS GEN-
25 ERAL.—An action to enforce a violation of section 129,

1 129A, or 129B of the Truth in Lending Act, as amended
2 and added by this Act, may also be brought by the appro-
3 priate State attorney general in any appropriate United
4 States district court, or any other court of competent ju-
5 risdiction, not later than 3 years after the date on which
6 the violation occurs. An action under this subsection does
7 not create an independent basis for removal of an action
8 to a United States district court.

9 (d) OTHER CHANGES TO CIVIL LIABILITY.—

10 (1) AMOUNT OF AWARD.—Section 130(a)(2) of
11 the Truth in Lending Act (15 U.S.C. 1640(a)(2)) is
12 amended—

13 (A) in subparagraph (A)(iii), by—

14 (i) striking “\$200” and inserting
15 “\$500”;

16 (ii) striking “\$2,000” and inserting
17 “\$5,000”; and

18 (iii) adding before the semicolon at
19 the end the following: “, such amount to
20 adjusted annually based on the consumer
21 price index, to maintain current value.”;
22 and

23 (B) in subparagraph (B), by striking
24 “500,000” and inserting “\$5,000,000”.

1 (2) FAILURE TO COMPLY WITH SECTION
2 129A.—Section 130(a)(4) of the Truth in Lending
3 Act (15 U.S.C. 1640(a)(4)) is amended by inserting
4 “or 129A” after “129”.

5 **SEC. 704. LIABILITY FOR MONETARY DAMAGES.**

6 Section 131 of the Truth in Lending Act (15 U.S.C.
7 1641) is amended by—

8 (1) by redesignating subsection (f) as sub-
9 section (g); and

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

12 “(f) LIABILITY OF ASSIGNEES FOR MONETARY DAM-
13 AGES FOR VIOLATIONS OF SECTIONS 129A AND 129B.—

14 “(1) SUBPRIME OR NONTRADITIONAL LOANS.—

15 “(A) INDIVIDUAL ACTIONS.—Notwith-
16 standing subsections (a) and (e), any person
17 who purchases, holds, or is otherwise assigned
18 a mortgage or similar security interest in con-
19 nection with a subprime or nontraditional home
20 mortgage loan, other than a loan described
21 under section 103(aa), shall be liable in an indi-
22 vidual action for remedies available under sec-
23 tion 130 for violations of sections 129A and
24 129B that the consumer could assert against

1 the creditor or mortgage originator originating
2 that mortgage.

3 “(B) CLASS ACTIONS.—Notwithstanding
4 subsections (a) and (e), any person who pur-
5 chases, holds, or is otherwise assigned a mort-
6 gage or similar security interest in connection
7 with a subprime or nontraditional home mort-
8 gage loan, other than a loan described under
9 section 103(aa), shall be liable in a class action
10 for remedies available under section 130 for vio-
11 lations of section 129A that the consumer could
12 assert against the creditor or mortgage origi-
13 nator originating that mortgage, unless such
14 person demonstrates, by a preponderance of the
15 evidence, that a reasonable person exercising
16 ordinary and independent due diligence could
17 not determine that the home mortgage loan was
18 not in compliance with the requirements of sec-
19 tion 129A.

20 “(2) OTHER LOANS.—Notwithstanding sub-
21 sections (a) and (e), any person who purchases,
22 holds, or is otherwise assigned a mortgage or similar
23 security interest in connection with home mortgage
24 loan other than a loan described under section
25 103(aa), a subprime, or a nontraditional loan, shall

1 be liable only in an individual action for remedies
2 available under section 130 for violations of section
3 129B that the consumer could assert against the
4 creditor or mortgage originator originating that
5 mortgage, provided that such liability is limited to
6 the amount of all remaining indebtedness and the
7 total amount paid in connection with the transaction
8 plus amounts required to recover costs, including
9 reasonable attorneys' fees.”.

10 **SEC. 705. REMEDY IN LIEU OF RESCISSION FOR CERTAIN**
11 **VIOLATIONS.**

12 Section 131 of the Truth in Lending Act (15 U.S.C.
13 1641) is further amended by adding at the end the fol-
14 lowing new subsection:

15 “(h) REMEDY IN LIEU OF RESCISSION FOR CERTAIN
16 VIOLATIONS.—At the election of a consumer entitled to
17 rescind for violations of sections 129, 129A, or 129B, any
18 person (including a creditor) who holds, purchases, or is
19 otherwise assigned a mortgage or similar security interest
20 in connection with home mortgage loan—

21 “(1) may be required to make such adjustments
22 to the balance of the obligation as are required
23 under section 125; and

24 “(2) shall modify or refinance the loan, at no
25 cost to the consumer, the resulting balance of which

1 shall provide terms that would have satisfied the re-
2 quirements of sections 129, 129A, or 129B at the
3 origination of the loan and to pay costs and reason-
4 able attorneys fees.”.

5 **SEC. 706. PROHIBITION ON MANDATORY ARBITRATION.**

6 Section 131 of the Truth in Lending Act (15 U.S.C.
7 1641) is further amended by adding at the end the fol-
8 lowing new subsection:

9 “(i) **RULE OF CONSTRUCTION.**—No provision in a
10 home mortgage loan shall be construed to bar a consumer
11 from access to any judicial procedure, forum, or remedy
12 through any court of competent jurisdiction under any
13 provision of Federal or State law.”.

14 **SEC. 707. LENDER LIABILITY.**

15 Section 130 of the Truth in Lending Act (15 U.S.C.
16 1640) is amended by adding at the end the following new
17 subsection:

18 “(i) **LENDER LIABILITY.**—

19 “(1) **TRANSITIVE LIABILITY FOR SUBPRIME**
20 **LOAN.**—In any case in which a mortgage broker
21 sells or delivers a high-cost mortgage, a subprime
22 mortgage, or a nontraditional mortgage, a creditor
23 shall be liable for the acts, omissions, and represen-
24 tations made by the mortgage broker in connection
25 with such home mortgage loan.

1 “(2) TRANSITIVE LIABILITY FOR OTHER
 2 LOANS.—In the case of any other home mortgage
 3 loan not described under paragraph (1) in which a
 4 mortgage broker has received a yield spread pre-
 5 mium or other compensation from a creditor, the
 6 creditor shall be liable for the acts, omissions, and
 7 representations made by the mortgage broker in con-
 8 nection with such home mortgage loan.”.

9 **TITLE VIII—OTHER BANKING**
 10 **AGENCY AUTHORITY**

11 **SEC. 801. INCLUSION OF ALL BANKING AGENCIES IN THE**
 12 **REGULATORY AUTHORITY UNDER THE FED-**
 13 **ERAL TRADE COMMISSION ACT WITH RE-**
 14 **SPECT TO DEPOSITORY INSTITUTIONS.**

15 (a) IN GENERAL.—Section 18(f) of the Federal
 16 Trade Commission Act (15 U.S.C. 57a(f)(1)) is amend-
 17 ed—

18 (1) in paragraph (1)—

19 (A) in the first sentence—

20 (i) by striking “banks or savings and
 21 loan institutions described in paragraph
 22 (3), each agency specified in paragraph (2)
 23 or (3) of this subsection shall establish”
 24 and inserting “depository institutions and
 25 Federal credit unions, the Federal banking

1 agencies and the National Credit Union
2 Administration Board shall each estab-
3 lish”; and

4 (ii) by striking “banks or savings and
5 loan institutions described in paragraph
6 (3), subject to its jurisdiction” and insert-
7 ing “depository institutions or Federal
8 credit unions subject to the jurisdiction of
9 such agency or Board”;

10 (B) in the second sentence, by striking
11 “The Board of Governors of the Federal Re-
12 serve System (with respect to banks) and the
13 Federal Home Loan Bank Board (with respect
14 to savings and loan institutions described in
15 paragraph (3))” and inserting “Each Federal
16 banking agency (with respect to the depository
17 institutions each such agency supervises)”;

18 (C) in the third sentence—

19 (i) by striking “each such Board” and
20 inserting “each such banking agency and
21 the National Credit Union Administration
22 Board”;

23 (ii) by striking “banks or savings and
24 loan institutions described in paragraph
25 (3)” each place such term appears and in-

1 serting “depository institutions subject to
2 the jurisdiction of such agency”;

3 (iii) by striking “(A) any such Board”
4 and inserting “(A) any such Federal bank-
5 ing agency or the National Credit Union
6 Administration Board”; and

7 (iv) by striking “with respect to
8 banks, savings and loan institutions” and
9 inserting “with respect to depository insti-
10 tutions”; and

11 (D) by adding at the end the following:
12 “For purposes of this subsection, the terms
13 ‘Federal banking agency’ and ‘depository insti-
14 tution’ have the same meaning as in section 3
15 of the Federal Deposit Insurance Act.”;

16 (2) in paragraph (3), by inserting “by the Di-
17 rector of the Office of Thrift Supervision” before the
18 period at the end;

19 (3) in paragraph (4), by inserting “by the Na-
20 tional Credit Union Administration” before the pe-
21 riod at the end; and

22 (4) by amending paragraph (5) to read as fol-
23 lows:

24 “(5) For the purpose of the exercise by the Federal
25 banking agencies described in paragraphs (2) and (3) and

1 the National Credit Union Administration Board de-
2 scribed in paragraph (4) of its powers under any Act re-
3 ferred to in those paragraphs, a violation of any regulation
4 prescribed under this subsection shall be considered a vio-
5 lation of a requirement imposed under that Act. In addi-
6 tion to its powers under any provision of law specifically
7 referred to in paragraphs (2) through (4), each of the
8 agencies or the Board referred to in those paragraphs may
9 exercise, for the purpose of enforcing compliance with any
10 regulation prescribed under this subsection, any other au-
11 thority conferred on it by law.”.

12 (b) PREEMPTION.—Such section 18(f) is further
13 amended by striking paragraph (6) and inserting the fol-
14 lowing:

15 “(6) Notwithstanding anything in this subsection or
16 any other provision of law, including the National Bank
17 Act (12 U.S.C. 38 et seq.) and the Home Owners’ Loan
18 Act (12 U.S.C. 1461 et seq.), regulations promulgated
19 under this subsection shall be considered supplemental to
20 State laws governing unfair and deceptive acts and prac-
21 tices and may not be construed to preempt any provision
22 of State law that provides equal or greater protections.”.

23 (c) TECHNICAL AMENDMENT.—Such section 18(f) is
24 further amended in paragraph (2)(C), by inserting “than”
25 after “(other”.

1 **TITLE IX—MISCELLANEOUS**

2 **SEC. 901. AUTHORIZATIONS.**

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

6 (1) \$31,250,000 to support the employment of
7 30 additional agents of the Federal Bureau of Inves-
8 tigation and 2 additional dedicated prosecutors at
9 the Department of Justice to coordinate prosecution
10 of mortgage fraud efforts with the offices of the
11 United States Attorneys; and

12 (2) \$750,000 to support the operations of inter-
13 agency task forces of the Federal Bureau of Inves-
14 tigation in the areas with the 15 highest concentra-
15 tions of mortgage fraud.

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