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S. 2452: Home Ownership Preservation and Protection Act of 2007

Bill Status

Introduced: Dec 12, 2007

Sponsor: [Sen. Christopher Dodd \[D-CT\]](#)

Status: Introduced

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You are viewing the following version of this bill:

Introduced in Senate: This is the original text of the bill as it was written by its sponsor and submitted to the House for consideration.

Text of Legislation

S 2452 IS

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.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) Short Title- This Act may be cited as the 'Home Ownership Preservation and Protection Act of 2007'.

(b) Table of Contents- The table of contents for 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.

SEC. 2. DEFINITIONS.

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

`(cc) Definitions Relating to Home Mortgage Loans-

`(1) HOME MORTGAGE LOAN- The term 'home mortgage loan' means a consumer credit transaction secured by a home, used or intended to be used as a principal dwelling, regardless of whether it is real or personal property, or whether the loan is used to purchase the home.

`(2) MORTGAGE BROKER- The term 'mortgage broker' means a person who, for compensation or in anticipation of compensation, arranges or negotiates or attempts to arrange or negotiate home mortgage loans or commitments for such loans, refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made.

`(3) MORTGAGE ORIGINATOR- The term 'mortgage originator' means any creditor or other person, including a mortgage broker, who, for compensation or in anticipation of compensation, engages either directly or indirectly in the acceptance of applications for home mortgage loans, solicitation of home mortgage loans on behalf of consumers, negotiation of terms or conditions of home mortgage loans on behalf of consumers or lenders, or negotiation of sales of existing home mortgage loans to institutional or noninstitutional lenders. It also includes any employee or agent of such person.

`(4) NONTRADITIONAL MORTGAGE LOAN- The term 'nontraditional mortgage loan' means a home mortgage loan that allows a consumer to defer payment of principal or interest.

`(5) SUBPRIME MORTGAGE LOAN-

`(A) IN GENERAL- The term 'subprime mortgage loan' means a home mortgage loan in which the annual percentage rate exceeds the greater of the thresholds determined under subparagraph (B) or (C), as applicable.

`(B) TREASURY SECURITIES RATE SPREAD- A home mortgage loan is a subprime mortgage loan if the difference between the annual percentage rate for the loan and the yield on United States Treasury securities having comparable periods of maturity is equal to or greater than--

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

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

`(C) CONVENTIONAL MORTGAGE RATE SPREAD- A home mortgage loan is a subprime mortgage loan if the difference between the annual percentage rate for the loan and the annual yield on conventional mortgages, as published by the Board of Governors of the Federal Reserve System in statistical release H.15 (or any successor publication thereto) is either equal to or greater than--

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

`(ii) 3.75 percentage points, if the loan is secured by a subordinate lien mortgage or deed of trust.

`(D) RULE OF CONSTRUCTION- For purposes of subparagraph (B), the difference between the annual percentage rate of a home mortgage loan and the yield on United States Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of the Federal Home Mortgage Disclosure Act, whether or not such loan is subject to or reportable under the provisions of that Act.!

SEC. 3. EFFECTIVE DATE AND REGULATIONS.

(a) Effective Date- This Act and the amendments made by this Act shall become effective 6 months after the date of enactment of this Act, and shall apply to all transactions consummated on or after that effective date, except as otherwise specifically provided herein.

(b) Regulations Required- Not later than 6 months after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall issue in final form such regulations as are necessary to carry out this Act and the amendments made by this Act.

TITLE I--HIGH-COST MORTGAGES

SEC. 101. DEFINITIONS RELATING TO HIGH-COST MORTGAGES.

(a) High-Cost Mortgage Defined- Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended by striking all that precedes paragraph (2) and inserting the following:

(aa) High-Cost Mortgage-

(1) DEFINITION-

(A) IN GENERAL- The term 'high-cost mortgage', and a mortgage referred to in this subsection, mean a consumer credit transaction that is secured by the principal dwelling of a consumer, other than a reverse mortgage transaction, if--

(i) in the case of a loan secured--

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

(II) by a subordinate or junior mortgage on such dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 10 percentage points the yield on United States Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

(ii) the total points and fees payable in connection with the loan exceed--

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

(II) in the case of a loan for less than \$20,000, the lesser of 8 percent of the total loan amount or \$1,000.

(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT- For purposes of subparagraph (A)(i), the annual percentage rate shall be determined as--

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

(ii) in the case of a loan in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time by the terms of the loan agreement; and

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

(b) Adjustment of Percentage Points- Section 103(aa)(2) of the Truth in Lending Act (15 U.S.C. 1602(aa)(2)) is amended by striking subparagraph (B) and inserting the following:

(B) An increase or decrease under subparagraph (A)--

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

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

(c) Points and Fees Defined-

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

(A) by striking '(1)(B)' and inserting '(1)(A)(ii)';

(B) by striking subparagraph (B) and inserting the following:

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

(C) in subparagraph (C)(iii), by striking 'and' at the end;

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

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

(D) premiums or other charges payable at or before consummation of the loan for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

(E) the maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents;

(F) all prepayment fees or penalties that are incurred by the customer, if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and'

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

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

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

(5) CALCULATION OF POINTS AND FEES FOR OPEN-END LOANS- In the case of a loan under an open-end credit plan, points and fees shall be calculated, for purposes of this section and section 129, by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the loan documents, plus the minimum additional fees that the consumer would be required to pay to draw down an amount equal to the total credit line.'

(d) High-Cost Mortgage Lender- Section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f)) is amended by striking the last sentence and inserting the following: 'Any person who originates or brokers 2 or more mortgages referred to in subsection (aa) in any 12-month period, any person who originates 1 or more such mortgages through a mortgage broker in any 12-month period or in connection with a table funded transaction involving such a mortgage, and any person to whom the obligation is initially assigned at or after settlement, shall be considered to be a creditor for

purposes of this title.!

(e) Bona Fide Discount Loan Discount Points and Prepayment Penalties- Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended by inserting after paragraph (5), as added by this Act, the following:

“(6) BONA FIDE DISCOUNT POINTS-

“(A) IN GENERAL- For the purpose of determining the amount of points and fees under this subsection--

“(i) not more than 2 bona fide discount points payable by the consumer in connection with the mortgage shall be excluded, but only if the interest rate from which the interest rate on the mortgage will be discounted does not exceed by more than 1 percentage point the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater; and

“(ii) unless 2 bona fide discount points have been excluded under subparagraph (A), not more than 1 bona fide discount point payable by the consumer in connection with the mortgage shall be excluded, but only if the interest rate from which the interest rate on the mortgage will be discounted does not exceed by more than 2 percentage points the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

“(B) DEFINITION- For purposes of subparagraph (A), 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.

“(C) EXCEPTION FOR INTEREST RATE REDUCTIONS INCONSISTENT WITH INDUSTRY NORMS- Subparagraph (A) 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. 102. ADDITIONAL PROTECTIONS FOR HOEPA LOANS.

(a) No Prepayment Penalties- Section 129(c) of the Truth in Lending Act (15 U.S.C. 1639(c)) is amended--

(1) by striking paragraph (2); and

(2) in paragraph (1)--

(A) by striking ‘(1) IN GENERAL- ‘; and

(B) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively, and moving the margins 2 ems to the left.

(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 any earlier required scheduled payments, except that this subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer.!

(c) Other Prohibitions on High-Cost Mortgages- Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by adding at the end the following:

“(m) No Yield Spread Premiums- No person may provide, and no mortgage originator may receive,

directly or indirectly, any compensation for originating a home mortgage loan that is more costly than that for which the consumer qualifies, or that is based on, or varies with, the terms of any home mortgage loan.

`(n) Acceleration of Debt- No high-cost mortgage may contain a provision which permits the creditor, in its sole discretion, to accelerate the indebtedness, other than in any case in which repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or for a breach of a material provision of the loan documents unrelated to the payment schedule.

`(o) Restriction on Financing Points and Fees- No creditor may, directly or indirectly, finance, in connection with any high-cost mortgage--

`(1) any prepayment fee or penalty payable by the consumer in a refinancing transaction, if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced; or

`(2) any points or fees as defined in section 103(aa)(4).

`(p) Prohibition on Evasions, Structuring of Transactions, and Reciprocal Arrangements- A creditor may not take any action in connection with a high-cost mortgage--

`(1) to structure a loan transaction as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of this title; or

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

`(q) Modification and Deferral Fees Prohibited- A creditor may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage, unless the modification, renewal, extension, or amendment results in a lower annual percentage rate on the mortgage for the consumer, and then only if the fee is bona fide and reasonable.

`(r) Net Tangible Benefit- In accordance with regulations prescribed by the Board, no originator may make, provide, or arrange a high-cost mortgage loan that involves a refinancing of a prior existing home mortgage loan, unless the new loan will provide a net tangible benefit to the consumer.'

TITLE II--PROTECTIONS APPLICABLE TO SUBPRIME AND CERTAIN OTHER LOANS

SEC. 201. TRUTH IN LENDING ACT AMENDMENTS.

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

`SEC. 129A. PROTECTIONS FOR SUBPRIME AND NONTRADITIONAL HOME LOANS.

`(a) Assessment of Ability To Pay-

`(1) IN GENERAL-

`(A) IN GENERAL- Before entering into or otherwise facilitating a subprime or nontraditional mortgage loan, each mortgage originator shall verify the reasonable ability of the borrower to pay the principal and interest on the loan and any real estate taxes and homeowner insurance fees and premiums.

`(B) CONSIDERATIONS- A determination under subparagraph (A) shall include consideration of--

`(i) the income of the borrower;

`(ii) the credit history of the borrower;

`(iii) the current obligations and employment status of the borrower;

`(iv) the debt-to-income ratio of the monthly gross income of the borrower, inclusive of all scheduled or otherwise significant debt payments and total monthly housing payments, including taxes, property and private mortgage insurance, any required homeowner or condominium fees, and any subordinate mortgages, including those that will be made contemporaneously to the same borrower;

`(v) the residual income of the borrower; and

`(vi) other available financial resources, other than the equity of the borrower in the principal dwelling that secures or would secure the loan.

`(2) VARIABLE MORTGAGE RATES- In the case of a subprime or nontraditional mortgage loan, with respect to which the applicable rate of interest may vary, for purposes of paragraph (1), the ability to pay shall be determined based on the monthly payment that could be due from the borrower, using as assumptions--

`(A) the fully indexed interest rate;

`(B) a repayment schedule which achieves full amortization over the life of the loan, assuming no default by the borrower;

`(C) for products that permit negative amortization, the initial loan amount plus any balance increase that may accrue from the negative amortization provision;

`(D) that the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over that period of time which would be permitted after the consumer has made lower payments, as permitted under the terms of the loan, and which includes any additions to principal that will result from such permitted lower payments, with no balloon payment, unless the loan contract requires a more rapid repayment schedule to be used in the calculation; and

`(E) the reasonably foreseeable capacity of the borrower to make payments, assuming market changes as to the contract index rate over the period of the loan, using, to make such assessment, a credible market rate determined according to regulations issued by the Board, which regulations shall require reasonable market expectations to be a factor.

`(3) REBUTTABLE PRESUMPTION-

`(A) IN GENERAL- For purposes of this subsection there is a rebuttable presumption that a mortgage was made without regard to repayment ability if, at the time at which the loan was consummated, the total monthly debts of the borrower, including total monthly housing payments, taxes, property, and private mortgage insurance, any required homeowner or condominium fees, and any subordinate mortgages, including those that will be made contemporaneously to the same borrower, exceed 45 percent of the monthly gross income of the borrower.

`(B) REBUTTAL- To rebut the presumption of inability to repay under subparagraph (A) the creditor shall, at minimum, determine and consider the residual income of the borrower after payment of current expenses and proposed home loan payments, except that no presumption of ability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time at which the loan is consummated, the total monthly debts of the borrower (including amounts owed under the loan) does not exceed 45 percent of the monthly gross income of the borrower.

`(b) Requirement of Tax and Insurance Escrows- No subprime or nontraditional mortgage loan may be arranged, approved, or made without requiring escrow of tax and insurance installments calculated in accordance with the requirements of section 10 of the Real Estate Settlement Procedures Act of 1974, and regulations promulgated pursuant thereto, and mortgage insurance premiums, if any.

`(c) Prohibition on Prepayment Penalties- No subprime or nontraditional mortgage loan may contain a provision that requires a consumer to pay a penalty for paying all or part of the principal

before the date on which it is due.

`(d) Prohibition on Yield-Spread Premiums- No person may provide, and no mortgage originator may receive, directly or indirectly, any compensation for originating a subprime or nontraditional mortgage loan that is more costly than that for which the consumer qualifies, or that is based on, or varies with, the terms (other than the amount of loan principal) of any home mortgage loan.

`(e) Net Tangible Benefit-

`(1) IN GENERAL- In accordance with regulations prescribed by the Board, no originator may make, provide, or arrange a subprime or nontraditional mortgage loan that involves a refinancing of a prior existing home mortgage loan, unless the new loan will provide a net tangible benefit to the consumer.

`(2) CERTAIN LOANS PROVIDING NO NET TANGIBLE BENEFIT- For purposes of paragraph (1), a mortgage loan that involves refinancing of a prior existing mortgage loan shall not be considered to provide a net tangible benefit to the borrower if the costs of the refinanced loan, including points, fees, and other charges, exceed the amount of any newly advanced principal, less the points, fees, and other charges, without any corresponding changes in the terms of the refinanced loan that are advantageous to the borrower.'

TITLE III--PROTECTIONS FOR ALL HOME LOAN BORROWERS

SEC. 301. MORTGAGE PROTECTIONS.

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

`SEC. 129B. PROTECTIONS FOR ALL HOME LOANS.

`(a) Duties of All Mortgage Originators- Each mortgage originator shall, with respect to each home mortgage loan and, in addition to requirements under other applicable provisions of Federal or State law--

`(1) safeguard and account for any money handled for the borrower;

`(2) follow reasonable and lawful instructions from the borrower;

`(3) act with reasonable skill, care, and diligence;

`(4) act in good faith and with fair dealing in any transaction, practice, or course of business in connection with the originating of any home mortgage loan; and

`(5) make reasonable efforts to secure a home mortgage loan that is appropriately advantageous to the borrower, considering all of the circumstances, including the product type, rates, charges, and repayment terms of the loan.

`(b) Duties of Mortgage Brokers- Each mortgage broker shall with respect to each home mortgage loan be deemed to have a fiduciary relationship with the borrower, and, in addition to duties imposed by other applicable provisions of Federal or State law, shall--

`(1) act in the best interest of the borrower and in the utmost good faith toward the borrower, and refrain from compromising the rights or interests of the borrower in favor of the rights or interests of another, including a right or interest of the mortgage broker; and

`(2) clearly disclose to the borrower, not later than 3 days after receipt of the loan application, all material information that might reasonably affect the rights, interests, or ability of the borrower to receive the borrower's intended benefit from the home mortgage loan, including total compensation that the broker would receive from any of the loan options that the broker presents to the borrower.

`(c) Prohibition on Steering-

`(1) IN GENERAL- In connection with a home mortgage loan, a mortgage originator may

not steer, counsel, or direct a consumer to a loan with rates, charges, principal amount, or prepayment terms that are more costly than that for which the consumer qualifies.

`(2) DUTIES TO CONSUMERS- If unable to suggest, offer, or recommend to a consumer a home mortgage loan that is not more expensive than that for which the consumer qualifies, a mortgage originator shall disclose to the consumer--

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

`(B) the reasons that the products and services offered by the mortgage originator are not available to or reasonably advantageous for the consumer.

`(3) PROHIBITED CONDUCT- In connection with a home mortgage loan, a mortgage originator may not--

`(A) mischaracterize the credit history of a consumer or the home loans available to a consumer;

`(B) mischaracterize or suborn mischaracterization of the appraised value of the property securing the extension of credit; and

`(C) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than that for which the consumer qualifies, discourage a consumer from seeking a home mortgage loan from another creditor or with another mortgage originator.

`(d) Required Documentation-

`(1) IN GENERAL- With respect to any home mortgage loan, a mortgage originator shall base its determination of the ability of a consumer to pay on--

`(A) documentation of all sources of income verified by tax returns, payroll receipts, bank records, or the best and most appropriate form of documentation available, subject to such requirements and exceptions as determined appropriate by the Board; and

`(B) the debt-to-income ratio and the residual income of the consumer after payment of current expenses and proposed home loan payments.

`(2) LIMITATION- A statement provided by a consumer of the income and financial resources of the consumer, without other documentation referred to in paragraph (1), is not sufficient verification for purposes of assessing the ability of the consumer to pay.

`(e) Limitations on Yield-Spread Premiums-

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

`(2) LIMITED EXCEPTION FOR NO-COST LOANS- Notwithstanding paragraph (1), in a home mortgage loan, other than a high-cost mortgage loan, a subprime mortgage loan, or a nontraditional mortgage loan, a mortgage broker may receive compensation in the form of an increased rate, but only if--

`(A) the mortgage broker receives no other compensation, however denominated, directly or indirectly, from the consumer, creditor, or other mortgage originator;

`(B) the loan does not include discount points, origination points, or rate reduction points, however denominated, or any payment reduction fee, however denominated;

`(C) the loan does not include a prepayment penalty; and

`(D) there are no other closing costs associated with the loan, except for fees to government officials or amounts to fund escrow accounts for taxes and insurance.

`(f) Recommended Default- No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a mortgage loan that refinances all or any portion of such existing loan or debt.

`(g) Effect of Foreclosure on Preexisting Lease-

`(1) IN GENERAL- Notwithstanding any other provision of law, in the case of any foreclosure with respect to a home mortgage loan entered into after the date of enactment of this Act, any successor in interest in such property pursuant to the foreclosure shall assume such interest subject to--

`(A) the provision, by the successor in interest, of a notice to vacate to any bona fide tenant at least 90 days before the effective date of the notice to vacate; and

`(B) the rights of any bona fide tenant, as of the date of such notice of foreclosure--

`(i) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease; or

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

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

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

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

`(C) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property.!

TITLE IV--GOOD FAITH AND FAIR DEALING IN APPRAISALS

SEC. 401. DUTIES OF APPRAISERS.

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

`SEC. 129C. DUTIES OF APPRAISERS.

`(a) Definitions- In this section, the following definitions shall apply:

`(1) APPRAISER- The term `appraiser' means a person who--

`(A) is certified or licensed by the State in which the property to be appraised is located; and

`(B) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the regulations prescribed under such title, as in effect on the date of the appraisal.

`(2) QUALIFYING BOND- The term `qualifying bond' means a bond equal to not less than 1 percent of the aggregate value of all homes appraised by an appraiser of real property in connection with a home mortgage loan in the calendar year preceding the date of the transaction, with respect to which--

`(A) the bond shall inure first to the benefit of the homeowners who have claims

against the appraiser under this title or any other applicable provision of law, and second to the benefit of originating creditors that complied with their duty of good faith and fair dealing in accordance with this title; and

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

`(b) Standard of Care- Each appraiser shall, in addition to the duties imposed by otherwise applicable provisions of Federal or State law, with respect to each home mortgage loan in which the appraiser is involved--

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

`(2) act in good faith and with fair dealing in any transaction, practice, or course of business associated with the transaction.

`(c) Duties of Appraisers-

`(1) OBJECTIVE APPRAISALS- All appraisals carried out by an appraiser shall be accurate and reasonable. An appraiser shall have no direct or indirect interest in the property to be appraised, the real estate transaction prompting such appraisal, or the home loan involved in such transaction.

`(2) BOND REQUIREMENT- No appraiser may charge, seek, or receive compensation for an appraisal unless the appraisal is covered by a qualifying bond.

`(3) NO TARGET VALUES- No lender or loan servicer may, with respect to a home mortgage loan, in any way--

`(A) seek to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the home mortgage loan; or

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

`(4) PROHIBITION ON CERTAIN DISCLOSURES- Neither the appraisal order nor any other communication in any form by an appraiser may include the requested loan amount or any estimate of value for the property to serve as collateral, either express or implied.

`(d) Appraisal Report- In any case in which an appraisal is performed in connection with a home mortgage loan, the lender or loan servicer shall provide a copy of the appraisal report to an applicant for a home mortgage loan, whether credit is granted, denied, or the application was withdrawn. The first copy of this report shall be provided to the applicant without charge.

`(e) Remedies- In addition to other remedies, in any action for a violation of this section, the following shall apply:

`(1) REQUIRED MODIFICATION- If a retrospective appraisal determines that the appraisal upon which the home loan was based exceeded the true market value by 10 percent or more, the holder of the loan shall modify the loan and recast the loan ab initio to a loan amount that is at the same loan-to-value which the original loan purported to be. All payments made prior to the recasting of such loan shall be applied to the reduced loan amount.

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

`(3) COLLECTION FROM APPRAISER'S QUALIFYING BOND- A consumer awarded

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

`(f) Civil Liability-

`(1) IN GENERAL- Any appraiser who fails to comply with any requirement of this section with respect to a borrower designated in a home mortgage loan contract, is liable to such borrower in an amount equal to the sum of--

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

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

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

`(2) JURISDICTION- Any action by a borrower for a failure to comply with the requirements of this section may be brought in any United States district court, or in any other court of competent jurisdiction, not later than 3 years from the date of the occurrence of such violation. This subsection does not bar a person from asserting a violation of this section in an action to collect the debt owed on a home mortgage loan, or foreclose upon the home securing a home mortgage loan, or to stop a foreclosure upon that home, which was brought more than 3 years after the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action. An action under this section does not create an independent basis for removal of an action to a United States district court.

`(3) STATE ATTORNEY GENERAL ENFORCEMENT- An action to enforce a violation of this section may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. An action under this section does not create an independent basis for removal of an action to a United States district court.'

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

SEC. 501. DUTIES OF LENDERS AND LOAN SERVICERS.

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

`SEC. 129D. DUTIES OF LENDERS AND LOAN SERVICERS.

`(a) Standard of Care-

`(1) AGENCY RELATIONSHIP- In the case of any home loan serviced by a loan servicer on behalf of a lender, the loan servicer shall be deemed an agent of that lender, and shall be subject to all requirements of agents otherwise applicable under Federal or State law.

`(2) FAIR DEALING- Each lender and loan servicer shall, in addition to the duties imposed by otherwise applicable provisions of Federal or State law, with respect to each home mortgage loan, including any home mortgage loan in default or in which the homeowner has filed for bankruptcy--

`(A) act with reasonable skill, care, diligence, and in accordance with the highest standards; and

`(B) act in good faith and with fair dealing in any transaction, practice, or course of business associated with the home mortgage loan.

`(b) Rules for Assessment of Fee-

`(1) IN GENERAL- No home mortgage loan contract may require, nor may any lender or loan servicer assess or receive, any fees or charges other than interest, late fees as specifically authorized in this section, or fees assessed for nonsufficient funds, and charges allowed

pursuant to subsection (i)(1)(B), until the home mortgage loan is the subject of a foreclosure proceeding and the debt on such loan has been accelerated.

`(2) FEE LIMITATIONS- Any permissible fee or charge described under paragraph (1) shall be--

`(A) reasonable;

`(B) for services actually rendered; and

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

`(3) ASSESSMENT AND DISCLOSURE-

`(A) IN GENERAL- Any permissible fee or charge described under paragraph (1) shall be--

`(i) assessed not later than 30 days after the date on which the fee was accrued; and

`(ii) explained clearly and conspicuously in the next monthly accounting statement provided to the borrower designated in the home mortgage loan contract.

`(B) FAILURE TO COMPLY- Failure by a lender or loan servicer to comply with the requirements set forth under subparagraph (A) shall result in the waiver of the fee.

`(4) REQUIRED STATEMENTS- Each month a lender or loan servicer shall provide to each borrower designated in a home mortgage loan contract entered into by such lender or loan servicer a periodic statement that clearly and in plain english explains--

`(A) the application of the prior month's payment by the borrower, including the allocation of the payment to interest, principal, escrow, and fees;

`(B) the status of the escrow account held on behalf of the borrower, including the payments into and from the escrow account; and

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

`(c) Maximum Allowable Late Fees Charged After Loan Closing-

`(1) IN GENERAL- No lender or loan servicer may impose a charge or fee for late payment of any amount due on a home mortgage loan--

`(A) unless the home mortgage loan contract specifically authorizes the charge or fee;

`(B) in an amount in excess of 5 percent of the amount of the payment past due;

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

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

`(2) RULE OF CONSTRUCTION- For purposes of this subsection, payments on any amount due on a home mortgage loan shall be applied first to current installments, then to delinquent payments, and then to delinquency charges.

`(3) COORDINATION WITH SUBSEQUENT LATE FEES- If a home loan mortgage payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is

attributable to a late fee or delinquency charge assessed on an earlier payment, no late fee or delinquency charge may be imposed on such payment.

`(d) Prompt Crediting of Payments Required- Each home loan mortgage payment amount received by a lender or a loan servicer shall be accepted and credited on the date received. Such payments shall be credited to interest and principal due on the home mortgage loan before crediting the payment to taxes, insurance, or fees.

`(e) Collateral Protection Insurance-

`(1) IN GENERAL- A lender or loan servicer may not charge any borrower designated in a home mortgage loan contract for collateral protection insurance, unless--

`(A) the home mortgage loan contract requires the borrower to maintain insurance on the collateral and clearly delineates--

`(i) the terms and conditions for imposition of and payment of the collateral;

`(ii) that such insurance may not protect the interests of the borrower and may be substantially more expensive than insurance that the borrower could purchase independently; and

`(iii) that the borrower will be charged for the cost of the insurance;

`(B) the lender or loan servicer makes every effort to avoid the necessity of requiring collateral protection insurance, including at least written notice and telephone communications with the borrower and the insurance agent of record regarding the--

`(i) obligation of the borrower to maintain property insurance; and

`(ii) additional cost to the borrower on a monthly basis if collateral protection insurance is required;

`(C) clear notice is received by the borrower at least 15 days in advance of the charge for collateral protection insurance, including--

`(i) notice that the--

`(I) placement of the insurance is imminent;

`(II) costs of the insurance will be paid by the borrower; and

`(III) the insurance will not protect the borrower from loss;

`(ii) notice of the amount of the new monthly payment; and

`(iii) instructions on the steps that the borrower may take to avoid such charge; and

`(D) charges for such insurance are bona fide and reasonable.

`(2) PROHIBITION- In no event is collateral protection insurance permitted when a lender or loan servicer is collecting fees in escrow from the borrower for the payment of property taxes and insurance, unless the borrower has had his or her insurance cancelled for some reason other than non-payment of the premium.

`(3) NOTICE OF CHARGE- After a charge for the purchase of collateral protection insurance has been issued by a lender or loan servicer, notice of the new monthly payment requirements shall be delivered to the borrower at least 15 days prior to the first increased payment--

`(A) explaining the imposition of the new charges for such insurance; and

`(B) providing information on what the borrower can do to obviate the need for such

insurance.

`(f) Obligations of Lender or Loan Servicer To Handle Escrow Funds- A lender or loan servicer shall make all payments from the escrow account held for the borrower designated in a home mortgage loan contract for insurance, taxes, and other charges with respect to the property secured by such contract in a timely manner to ensure that no late penalties are assessed and that no other negative consequences result, regardless of whether the loan is delinquent, unless--

`(1) there are not sufficient funds in the account of such borrower to cover the payments; and

`(2) the lender or loan servicer has a reasonable basis to believe that recovery of the funds will not be possible.

`(g) Information Exchange and Dispute Requirements-

`(1) MANDATORY RESPONSE TO BORROWERS' REQUESTS-

`(A) IN GENERAL- A lender or loan servicer shall respond to any request for information about a home mortgage loan or for resolution of any dispute involving a home mortgage loan submitted by a borrower designated in a home mortgage loan contract entered into by such lender or loan servicer.

`(B) TIMING OR RESPONSE- A response required under subparagraph shall occur--

`(i) without cost to the requesting borrower; and

`(ii) not later than 10 days after the receipt of such request.

`(C) SCOPE OF OBLIGATION- The scope of the response requirement set forth in subparagraph (A), includes--

`(i) providing--

`(I) the status of the borrowers account, including whether the account is current, or if not, the date the account went into default;

`(II) the current balance due on the home mortgage loan of the borrower, including the principal due, an explanation of the escrow balance, and whether there are any escrow deficiencies or shortages;

`(III) a full payment history of the borrower, which shows in a clear and easily understandable manner all of the activity on the home mortgage loan of the borrower since the origination of the loan, including the escrow account and the application of payments; and

`(IV) a copy of the original note and security instrument;

`(ii) correcting errors relating to the allocation of payments made by the borrower, final balances for purposes of paying off the loan or avoiding foreclosure, and other lender or loan servicer obligations;

`(iii) providing the identity, address, and other relevant information about the owner or assignee of the home mortgage loan; and

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

`(2) NO SHARING OF INFORMATION- During the 90-day period beginning on the date of the receipt of a request from a borrower under paragraph (1), a lender or loan servicer may not provide information to any reporting agency regarding any overdue payment, or other default on the home mortgage loan, by such borrower to any consumer

reporting agency (as such term is defined in section 603(f) of the Fair Credit Reporting Act).

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

`(h) Mandatory Loss Mitigation-

`(1) IN GENERAL- A lender or loan servicer shall not initiate a foreclosure of a home mortgage loan unless that lender or loan servicer has made a good faith review of the financial situation of the borrower designated in such home mortgage loan contract and has offered, whenever feasible, a repayment plan, forbearance, loan modification, or other option to assist the borrower in bringing his or her delinquent account into arrears. In the event that such options are not feasible, the lender or loan servicer shall refer the borrower to a housing counseling agency approved by the Secretary of Housing and Urban Development under section 106(d) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(d)).

`(2) REPORTS ON LOSS MITIGATION ACTIVITIES-

`(A) IN GENERAL- Each servicer shall report to the Board once every 3 months on the extent and results of its loss mitigation activities.

`(B) FORM AND CONTENT- The Board shall prescribe, by regulation, the form and content of the reports required by this paragraph which shall include--

`(i) categories of measures that result in modifications of loan provisions, including payment schedules, loan principle, and loan interest;

`(ii) forbearance agreements;

`(iii) acceptance of a reduced amount in satisfaction of the loan;

`(iv) assumption of the loan;

`(v) pre-foreclosure sales; and

`(vi) deeds in lieu of foreclosure, and foreclosures.

`(C) BASIS- Data required by this paragraph shall be reported on a servicer and lender basis.

`(D) PUBLIC AVAILABILITY- The Board shall make data received under this paragraph publicly available, and shall annually report to Congress on servicer loss mitigation activities.

`(3) FAILURE TO COMPLY- Failure by a lender or loan servicer to comply with the requirements under paragraph (1) shall constitute a defense to any foreclosure.

`(i) Payoff Statements-

`(1) PROHIBITION ON FEES-

`(A) IN GENERAL- No lender or loan servicer (or any third party acting on behalf of such lender or loan servicer) may charge a fee for transmitting to any borrower the amount due to pay off the outstanding balance on the home mortgage loan of such borrower.

`(B) EXCEPTION- After a lender or loan servicer (or any third party acting on behalf of such lender or loan servicer) has provided the information described in subparagraph (A) without charge on 4 occasions during a calendar year, the lender or loan servicer (or any third party acting on behalf of such lender or loan servicer) may thereafter charge a reasonable fee for providing such information during the remainder of the calendar year.

`(2) TIMING- The information described in subparagraph (A) shall be provided to the borrower within a reasonable period of time but in any event not more than 5 business days after the receipt of the request by the lender or loan servicer.

`(j) Civil Liability-

`(1) IN GENERAL- Any lender or loan servicer who fails to comply with any requirement of this section with respect to a borrower designated in a home mortgage loan contract, is liable to such borrower in an amount equal to the sum of--

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

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

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

`(2) JURISDICTION- Any action by a borrower for a failure to comply with the requirements of this section may be brought in any United States district court, or in any other court of competent jurisdiction, not later than 3 years from the date of the occurrence of such violation. This subsection does not bar a person from asserting a violation of this section in an action by a lender or loan servicer to collect the debt owed on a home mortgage loan, or foreclose upon the home securing a home mortgage loan, or to stop a foreclosure upon that home, which was brought more than 3 years after the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action. An action under this section does not create an independent basis for removal of an action to a United States district court.

`(3) STATE ATTORNEY GENERAL ENFORCEMENT- An action to enforce a violation of this section may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. An action under this section does not create an independent basis for removal of an action to a United States district court.

`(k) Definitions- In this section, the following definitions shall apply:

`(1) LENDER- The term 'lender' has the same meaning as in section 3500.2 of title 24, Code of Federal Regulations, as in effect on the date of enactment of this section.

`(2) LOAN SERVICER- The term 'loan servicer' has the same meaning as the term 'servicer' in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 ([12 U.S.C. 2605\(i\)\(2\)](#)).'

SEC. 502. REAL ESTATE SETTLEMENT PROCEDURES.

Section 6(b)(3) of the Real Estate Settlement Procedures Act of 1974 ([12 U.S.C. 2605\(b\)\(3\)](#)) is amended by adding at the end the following new subparagraph:

`(H) A statement explaining--

`(i) whether the account of the borrower is current, or if the account is not current, an explanation of the reason and date the account went into default;

`(ii) the current balance due on the loan, including the principal due, an explanation of the escrow balance, and whether there are any escrow deficiencies or shortages; and

`(iii) a full payment history of the borrower which shows in a clear and easily understandable manner, all of the activity on the home mortgage loan since the origination of the loan or the prior transfer of servicing, including the escrow account, and the application of payments.'

SEC. 503. EFFECTIVE DATE.

This title and the amendments made by this title shall become effective 90 days after the date of enactment of this Act, and shall apply to loan servicers and loan servicing activities on and after that effective date.

TITLE VI--FORECLOSURE PREVENTION COUNSELING

SEC. 601. FORECLOSURE PREVENTION COUNSELING.

Section 106(d)(6) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(d)(6)) is amended to read as follows:

(6) FORECLOSURE PREVENTION COUNSELING-

(A) NOTIFICATION AT TIME OF SETTLEMENT OF AVAILABILITY OF COUNSELING UPON DELINQUENCY-

(i) IN GENERAL- At the time of settlement of any real estate transaction involving a qualified mortgage, and together with the final signed loan documents, a lender or loan servicer shall provide to each eligible homeowner a plain language statement in conspicuous 16-point type or larger which shall include the following:

(I) COUNSELING STATEMENT- A counseling statement that reads as follows:

If you are more than 30 days late on your mortgage payments, your lender or loan servicer shall notify you of housing counseling agencies approved by the Secretary of Housing and Urban Development that may be able to assist you. Before you miss another mortgage payment, you are strongly encouraged to contact your lender or loan servicer or 1 of these agencies for assistance. If you are more than 60 days late on your mortgage payments, your lender or loan servicer shall send you a second notification containing this information. In addition, if you are more than 60 days late on your mortgage payment, your lender or loan servicer shall notify an approved housing counseling agency so that such agency can contact you regarding any assistance it may be able to provide.

You can also choose a housing counseling agency from the list provided with this statement to assist you. By calling 1 of these approved housing counseling agencies and signing an authorization form, your agency of choice will notify your lender or loan servicer of your decision.'

(II) COUNSELING AGENCY LISTING- A listing of at least 5 national, State and local housing counseling agencies approved by the Secretary. It is the responsibility of the lender or loan servicer to ensure that--

(aa) if fewer than 5 approved housing counseling agencies serve the area where the eligible homeowner is located, all available housing counseling agencies in that area shall be listed; and

(bb) the list shall include options of housing counseling agencies that provide in-person counseling, as well as telephone counseling.

(ii) NOTICE- Any notice required to be sent pursuant to this subparagraph shall be sent by first class mail to the last known address of the eligible homeowner and if different, to the residence which is the subject of the mortgage. The notice shall also be sent by registered or certified mail.

(B) NOTIFICATION OF AVAILABILITY OF COUNSELING UPON DELINQUENCY AFTER 60 DAYS-

(i) IN GENERAL- Before a lender or loan servicer accelerates the maturity of a mortgage obligation, commences legal action, including mortgage foreclosure to recover under the obligation, or takes possession of a security of the mortgage debtor for the mortgage obligation, the lender or loan servicer is

required to give notice to an eligible homeowner in conspicuous 16-point type or larger which shall include the following:

`(I) HOUSING COUNSELING INFORMATION IN NOTICE FORECLOSURE STATEMENT- A foreclosure notice that includes the following statement (blank lines to be filled in by the lender or loan servicer, as appropriate):

`This is an official notice that the mortgage on your home is in default, and the lender intends to foreclose in XXX days. The name, address, and phone number of housing counseling agencies approved by the Secretary of Housing and Urban Development serving your county are listed at the end of this notice.

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

`You can also choose an approved housing counseling agency from the list provided with this notice to assist you. By calling one of these approved housing counseling agencies and signing an authorization form, your agency of choice will notify your lender or loan servicer of your decision.'

`(II) COUNSELING AGENCY LISTING- A listing of at least 5 State and local housing counseling agencies approved by the Secretary. It is the responsibility of the lender or loan servicer to ensure that--

`(aa) if fewer than 5 approved housing counseling agencies serve the area where the eligible homeowner is located, all available housing counseling agencies in that area shall be listed; and

`(bb) the list shall include options of housing counseling agencies that provide in-person counseling, as well as telephone counseling.

`(ii) NOTICE- Any notice required to be sent pursuant to this subparagraph shall be sent by first class mail to the last known address of the eligible homeowner and if different, to the residence which is the subject of the mortgage. The notice shall also be sent by registered or certified mail

`(iii) TIMING- Any notice required to be sent pursuant to this subparagraph shall be sent at such time as the eligible homeowner is at least 60 days contractually delinquent in his or her mortgage payments or is in violation of other provisions of the mortgage.

`(iv) INCLUSION IN ALL FORECLOSURE MAILINGS- The foreclosure notice and counseling agency listing required under subclauses (I) and (II) of clause (i) shall be included with all foreclosure mailings sent to an eligible homeowner.

`(C) NO FORECLOSURE IF APPLICATION FOR FORECLOSURE PREVENTION SERVICES- A lender or loan servicer shall not initiate or continue a foreclosure--

`(i) upon receipt of a written confirmation that an eligible homeowner has engaged a housing counseling agency approved by the Secretary for the purposes of receiving foreclosure prevention services and assistance; and

`(ii) for the 45-day period beginning on the date of receipt of such written confirmation.

`(D) DUTIES-

`(i) DUTY OF LENDER OR SERVICER TO FORWARD INFORMATION-

`(I) IN GENERAL- Each lender or loan servicer shall forward the contact information of each eligible homeowner who has borrowed amounts from such lender or loan servicer for a qualified mortgage to a housing counseling agency approved by the Secretary in the event the mortgage payment of that homeowner is or becomes more than 60 days late so that the housing counseling agency can attempt to reach the homeowner.

`(II) PRE-EXISTING RELATIONSHIP- In the case that an eligible homeowner has a pre-existing relationship with a housing counseling agency approved by the Secretary, or a preference for one agency over another, the homeowner may indicate as such--

`(aa) at the time of settlement of the real estate transaction involving a qualified mortgage issued to that homeowner;

`(bb) by providing written correspondence to the lender or loan servicer for such qualified mortgage stating which housing counseling agency the homeowner would like to work with in case the homeowner should become delinquent in his or her mortgage payments; or

`(cc) by signing an authorization form at the office of such housing counseling agency of choice, which form shall then be sent to the lender or loan servicer.

`(III) RULES OF CONSTRUCTION- In order to carry out the provisions of this paragraph, lenders and loan servicers may form relationships with housing counseling agencies approved by the Secretary to provide services to eligible homeowners. Notwithstanding the previous sentence, exclusive relationships between any such parties are strictly prohibited.

`(ii) AGENCY REPRESENTATION OF HOMEOWNER- When a housing counseling agency provides a lender or loan servicer with a signed authorization form to represent an eligible homeowner, the lender or servicer shall respond to requests from that agency for information within 3 days, and to any workout proposals of that agency within 7 days. A lender or loan servicer may not refuse to work with a housing counselor from a housing counseling agency approved by the Secretary, if a signed authorization form an eligible homeowner has been received by that lender or loan servicer (faxed, scanned, and other electronically reproduced authorizations of such authorization form shall also be acceptable).

`(iii) REQUIRED DISCLOSURES TO HOMEOWNER- Each eligible homeowner shall be informed at the time of settlement of the real estate transaction involving a qualified mortgage issued to that homeowner that under this paragraph a housing counseling agency may provide easier access to assistance in case the homeowner becomes delinquent on his or her mortgage payments and that no information that would make it possible to identify the homeowner will be given to any other entity for any reason without the prior approval of the homeowner.

`(iv) REQUIRED RESOLUTIONS- A lender or loan servicer shall be required to consider all loss mitigation resolutions for each case of foreclosure initiated by the lender or loan servicer, including the modification of a qualified mortgage to a more permanent, affordable interest rate.

`(v) REQUIRED DISCLOSURES TO HOUSING COUNSELING AGENCIES- A lender or loan servicer shall disclose to any housing counseling agency approved by the Secretary and authorized to represent an eligible homeowner the name of the originator of the loans as stated in the Pooling and Servicing Agreement, and the name of the pool Trustee.

`(E) REIMBURSEMENTS FOR HOUSING COUNSELING SERVICES-

`(i) IN GENERAL- A lender or loan servicer of a qualified mortgage made to an eligible homeowner shall reimburse the housing counseling agency that is

authorized to represent the homeowner upon the rendering of services by such agency to the homeowner under this paragraph.

`(ii) REIMBURSEMENT- A lender or loan servicer shall seek reimbursement for the payment of housing counseling services as described under clause (i) from the Trust, if any, designated in the lender or servicer's Pooling and Servicing Agreement.

`(F) AVAILABILITY OF WAIVER-

`(i) IN GENERAL- An eligible homeowner may choose not to receive information regarding State and local housing counseling agencies approved by the Secretary, or to have their information shared with State and local housing counseling agencies, or both, at any time after default. An eligible homeowner may also submit a signed letter to their lender or loan servicer at any time after default to waive their right to receive information regarding State and local housing counseling agencies.

`(ii) LIMITATION ON WAIVER- The waiver described under clause (i) shall only apply to the receipt of information regarding housing counseling agencies located in the area where the homeowner is located or the sharing of the homeowner's personal information with such agencies. The waiver described under clause (i) shall not apply to the right of the homeowner to seek foreclosure prevention counseling, nor does it relieve the lender or loan servicer of the requirement to notify the homeowner of the availability of counseling as described in this section.

`(G) DEFINITIONS- In this paragraph, the following definitions shall apply:

`(i) LENDER- The term 'lender' has the same meaning as in section 3500.2 of title 24, Code of Federal Regulations.

`(ii) LOAN SERVICER- The term 'loan servicer' has the same meaning as the term 'servicer' as that term is defined in section 6(i)(2) of the Real Estate Settlement Procedures Act (12 U.S.C. 2605(i)(2)).

TITLE VII--REMEDIES AND ENFORCEMENT

SEC. 701. MATERIAL DISCLOSURES AND VIOLATIONS.

(a) Material Disclosures- Section 103(u) of the Truth in Lending Act (15 U.S.C. 1602(u)) is amended by--

(1) striking 'material disclosures' and inserting 'material disclosures or violations'; and

(2) striking 'and the disclosures required by section 129(a)' and inserting 'and the provisions of sections 129, 129A, and 129B.'.

(b) Consequences of Failure To Comply- Section 129(j) of the Truth in Lending Act (15 U.S.C. 1639(j)) is amended by striking 'contains a provision prohibited by' and inserting 'violates a provision of'.

SEC. 702. RIGHT OF RESCISSION.

(a) Time Limit for Exercise of Right- Section 125(f) of the Truth in Lending Act (15 U.S.C. 1635(f)) is amended by striking 'An obligor's right of rescission shall expire three years after the date of consummation' and inserting 'An obligor's right of rescission shall extend to 6 years from the date of consummation'.

(b) Assertion of Right- Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended by inserting after the second sentence the following new sentence: 'This subsection shall not bar a person from asserting a right to rescission under section 125 in an action to collect the debt or as a defense to a judicial foreclosure or to stop a nonjudicial foreclosure after the expiration of the time period set forth in section 125(f), but not exceed 10 years from the date of the consummation of the transaction.'.

SEC. 703. CIVIL LIABILITY.

(a) In General- Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by--

- (1) striking `creditor' and inserting `creditor or mortgage broker' in each place that term appears;
- (2) striking `Creditor' and inserting `Creditor or Mortgage Broker' in each place that term appears; and
- (3) striking `creditor's' and inserting `creditor's or mortgage broker's' in each place that term appears.

(b) Statute of Limitations Extended for Section 129, 129A, or 129B Violations- Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)), as amended by section 702(b), is further amended--

- (1) in the first sentence, by striking `Any action' and inserting `Except as otherwise provided in this subsection, any action';
- (2) by inserting after the first sentence the following new sentence: `Any action under this section with respect to any violation of section 129, 129A, or 129B may be brought in any United States district court, or in any other court of competent jurisdiction, within 3 years from the date of the occurrence of the violation.'; and
- (3) in the fifth sentence (as so redesignated) by striking `violation of section 129' and inserting `violation of section 129, 129A, or 129B'.

(c) Enforcement by State Attorneys General- An action to enforce a violation of section 129, 129A, or 129B of the Truth in Lending Act, as amended and added by this Act, may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. An action under this subsection does not create an independent basis for removal of an action to a United States district court.

(d) Other Changes to Civil Liability-

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

(A) in subparagraph (A)(iii), by--

- (i) striking `\$200' and inserting `\$500';
- (ii) striking `\$2,000' and inserting `\$5,000'; and
- (iii) adding before the semicolon at the end the following: `, such amount to adjusted annually based on the consumer price index, to maintain current value.'; and

(B) in subparagraph (B), by striking `500,000' and inserting `\$5,000,000'.

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

SEC. 704. LIABILITY FOR MONETARY DAMAGES.

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

- (1) by redesignating subsection (f) as subsection (g); and
- (2) by inserting after subsection (e) the following new subsection:

`(f) Liability of Assignees for Monetary Damages for Violations of Sections 129A and 129B-

`(1) SUBPRIME OR NONTRADITIONAL LOANS-

`(A) INDIVIDUAL ACTIONS- Notwithstanding subsections (a) and (e), any person who purchases, holds, or is otherwise assigned a mortgage or similar security interest in connection with a subprime or nontraditional home mortgage loan, other than a loan described under section 103(aa), shall be liable in an individual action for remedies available under section 130 for violations of sections 129A and 129B that the consumer could assert against the creditor or mortgage originator originating that mortgage.

`(B) CLASS ACTIONS- Notwithstanding subsections (a) and (e), any person who purchases, holds, or is otherwise assigned a mortgage or similar security interest in connection with a subprime or nontraditional home mortgage loan, other than a loan described under section 103(aa), shall be liable in a class action for remedies available under section 130 for violations of section 129A that the consumer could assert against the creditor or mortgage originator originating that mortgage, unless such person demonstrates, by a preponderance of the evidence, that a reasonable person exercising ordinary and independent due diligence could not determine that the home mortgage loan was not in compliance with the requirements of section 129A.

`(2) OTHER LOANS- Notwithstanding subsections (a) and (e), any person who purchases, holds, or is otherwise assigned a mortgage or similar security interest in connection with home mortgage loan other than a loan described under section 103(aa), a subprime, or a nontraditional loan, shall be liable only in an individual action for remedies available under section 130 for violations of section 129B that the consumer could assert against the creditor or mortgage originator originating that mortgage, provided that such liability is limited to the amount of all remaining indebtedness and the total amount paid in connection with the transaction plus amounts required to recover costs, including reasonable attorneys' fees.!

SEC. 705. REMEDY IN LIEU OF RESCISSION FOR CERTAIN VIOLATIONS.

Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is further amended by adding at the end the following new subsection:

`(h) Remedy in Lieu of Rescission for Certain Violations- At the election of a consumer entitled to rescind for violations of sections 129, 129A, or 129B, any person (including a creditor) who holds, purchases, or is otherwise assigned a mortgage or similar security interest in connection with home mortgage loan--

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

`(2) shall modify or refinance the loan, at no cost to the consumer, the resulting balance of which shall provide terms that would have satisfied the requirements of sections 129, 129A, or 129B at the origination of the loan and to pay costs and reasonable attorneys fees.!

SEC. 706. PROHIBITION ON MANDATORY ARBITRATION.

Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is further amended by adding at the end the following new subsection:

`(i) Rule of Construction- No provision in a home mortgage loan shall be construed to bar a consumer from access to any judicial procedure, forum, or remedy through any court of competent jurisdiction under any provision of Federal or State law.!

SEC. 707. LENDER LIABILITY.

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

`(i) Lender Liability-

`(1) TRANSITIVE LIABILITY FOR SUBPRIME LOAN- In any case in which a mortgage broker sells or delivers a high-cost mortgage, a subprime mortgage, or a nontraditional

mortgage, a creditor shall be liable for the acts, omissions, and representations made by the mortgage broker in connection with such home mortgage loan.

`(2) TRANSITIVE LIABILITY FOR OTHER LOANS- In the case of any other home mortgage loan not described under paragraph (1) in which a mortgage broker has received a yield spread premium or other compensation from a creditor, the creditor shall be liable for the acts, omissions, and representations made by the mortgage broker in connection with such home mortgage loan.'.

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.

(a) In General- Section 18(f) of the Federal Trade Commission Act ([15 U.S.C. 57a\(f\)\(1\)](#)) is amended--

(1) in paragraph (1)--

(A) in the first sentence--

(i) by striking `banks or savings and loan institutions described in paragraph (3), each agency specified in paragraph (2) or (3) of this subsection shall establish' and inserting `depository institutions and Federal credit unions, the Federal banking agencies and the National Credit Union Administration Board shall each establish'; and

(ii) by striking `banks or savings and loan institutions described in paragraph (3), subject to its jurisdiction' and inserting `depository institutions or Federal credit unions subject to the jurisdiction of such agency or Board';

(B) in the second sentence, by striking `The Board of Governors of the Federal Reserve System (with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions described in paragraph (3))' and inserting `Each Federal banking agency (with respect to the depository institutions each such agency supervises)';

(C) in the third sentence--

(i) by striking `each such Board' and inserting `each such banking agency and the National Credit Union Administration Board';

(ii) by striking `banks or savings and loan institutions described in paragraph (3)' each place such term appears and inserting `depository institutions subject to the jurisdiction of such agency';

(iii) by striking `(A) any such Board' and inserting `(A) any such Federal banking agency or the National Credit Union Administration Board'; and

(iv) by striking `with respect to banks, savings and loan institutions' and inserting `with respect to depository institutions'; and

(D) by adding at the end the following: `For purposes of this subsection, the terms `Federal banking agency' and `depository institution' have the same meaning as in section 3 of the Federal Deposit Insurance Act.';

(2) in paragraph (3), by inserting `by the Director of the Office of Thrift Supervision' before the period at the end;

(3) in paragraph (4), by inserting `by the National Credit Union Administration' before the period at the end; and

(4) by amending paragraph (5) to read as follows:

(5) For the purpose of the exercise by the Federal banking agencies described in paragraphs (2) and (3) and the National Credit Union Administration Board described in paragraph (4) of its powers under any Act referred to in those paragraphs, a violation of any regulation prescribed under this subsection shall be considered a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraphs (2) through (4), each of the agencies or the Board referred to in those paragraphs may exercise, for the purpose of enforcing compliance with any regulation prescribed under this subsection, any other authority conferred on it by law.

(b) Preemption- Such section 18(f) is further amended by striking paragraph (6) and inserting the following:

(6) Notwithstanding anything in this subsection or any other provision of law, including the National Bank Act (12 U.S.C. 38 et seq.) and the Home Owners' Loan Act (12 U.S.C. 1461 et seq.), regulations promulgated under this subsection shall be considered supplemental to State laws governing unfair and deceptive acts and practices and may not be construed to preempt any provision of State law that provides equal or greater protections.

(c) Technical Amendment- Such section 18(f) is further amended in paragraph (2)(C), by inserting 'than' after '(other'.

TITLE IX--MISCELLANEOUS

SEC. 901. AUTHORIZATIONS.

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

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

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

