

110TH CONGRESS  
1ST SESSION

**S.** \_\_\_\_\_

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

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IN THE SENATE OF THE UNITED STATES

Mr. DODD introduced the following bill; which was read twice and referred to the Committee on \_\_\_\_\_

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**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.

## 2

## 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:

4 “(cc) DEFINITIONS RELATING TO HOME MORTGAGE  
 5 LOANS.—

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

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

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

1           stitutional or noninstitutional lenders. It also in-  
2           cludes any employee or agent of such person.

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

7           “(5) SUBPRIME MORTGAGE LOAN.—

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

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

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

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

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

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

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

16           “(D) RULE OF CONSTRUCTION.—For pur-  
17 poses of subparagraph (B), the difference be-  
18 tween the annual percentage rate of a home  
19 mortgage loan and the yield on United States  
20 Treasury securities having comparable periods  
21 of maturity shall be determined using the same  
22 procedures and calculation methods applicable  
23 to loans that are subject to the reporting re-  
24 quirements of the Federal Home Mortgage Dis-  
25 closure Act, whether or not such loan is subject

1 to or reportable under the provisions of that  
2 Act.”.

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

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

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

14 **TITLE I—HIGH-COST**  
15 **MORTGAGES**

16 **SEC. 101. DEFINITIONS RELATING TO HIGH-COST MORT-**  
17 **GAGES.**

18 (a) **HIGH-COST MORTGAGE DEFINED.**—Section  
19 103(aa) of the Truth in Lending Act (15 U.S.C.  
20 1602(aa)) is amended by striking all that precedes para-  
21 graph (2) and inserting the following:

22 “(aa) **HIGH-COST MORTGAGE.**—

23 “(1) **DEFINITION.**—

24 “(A) **IN GENERAL.**—The term ‘high-cost  
25 mortgage’, and a mortgage referred to in this

1 subsection, mean a consumer credit transaction  
2 that is secured by the principal dwelling of a  
3 consumer, other than a reverse mortgage trans-  
4 action, if—

5 “(i) in the case of a loan secured—

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

17 “(II) by a subordinate or junior  
18 mortgage on such dwelling, the annual  
19 percentage rate at consummation of  
20 the transaction will exceed by more  
21 than 10 percentage points the yield on  
22 United States Treasury securities hav-  
23 ing comparable periods of maturity on  
24 the 15th day of the month imme-  
25 diately preceding the month in which

1 the application for the extension of  
2 credit is received by the creditor; or

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

5 “(I) in the case of a loan for  
6 \$20,000 or more, 5 percent of the  
7 total loan amount; or

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

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

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

21 “(ii) in the case of a loan in which the  
22 rate of interest varies solely in accordance  
23 with an index, the interest rate determined  
24 by adding the index rate in effect on the  
25 date of consummation of the transaction to

1 the maximum margin permitted at any  
2 time by the terms of the loan agreement;  
3 and

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

10 (b) ADJUSTMENT OF PERCENTAGE POINTS.—Section  
11 103(aa)(2) of the Truth in Lending Act (15 U.S.C.  
12 1602(aa)(2)) is amended by striking subparagraph (B)  
13 and inserting the following:

14 “(B) An increase or decrease under subparagraph  
15 (A)—

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

20 “(ii) may not result in the number of percent-  
21 age points referred to in paragraph (1)(A)(i)(II)  
22 being less than 8 percentage points or greater than  
23 12 percentage points.”.

24 (c) POINTS AND FEES DEFINED.—

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

4           (A) by striking “(1)(B)” and inserting  
5 “(1)(A)(ii)”;

6           (B) by striking subparagraph (B) and in-  
7 serting the following:

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

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

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

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

19           “(D) premiums or other charges payable at or  
20 before consummation of the loan for any credit life,  
21 credit disability, credit unemployment, or credit  
22 property insurance, or any other accident, loss-of-in-  
23 come, life, or health insurance, or any payments di-  
24 rectly or indirectly for any debt cancellation or sus-  
25 pension agreement or contract, except that insurance

1 premiums or debt cancellation or suspension fees  
2 calculated and paid in full on a monthly basis shall  
3 not be considered financed by the creditor;

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

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

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

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

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

18 “(5) CALCULATION OF POINTS AND FEES FOR  
19 OPEN-END LOANS.—In the case of a loan under an  
20 open-end credit plan, points and fees shall be cal-  
21 culated, for purposes of this section and section 129,  
22 by adding the total points and fees known at or be-  
23 fore closing, including the maximum prepayment  
24 penalties which may be charged or collected under  
25 the terms of the loan documents, plus the minimum

1 additional fees that the consumer would be required  
2 to pay to draw down an amount equal to the total  
3 credit line.”.

4 (d) HIGH-COST MORTGAGE LENDER.—Section  
5 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f))  
6 is amended by striking the last sentence and inserting the  
7 following: “Any person who originates or brokers 2 or  
8 more mortgages referred to in subsection (aa) in any 12-  
9 month period, any person who originates 1 or more such  
10 mortgages through a mortgage broker in any 12-month  
11 period or in connection with a table funded transaction  
12 involving such a mortgage, and any person to whom the  
13 obligation is initially assigned at or after settlement, shall  
14 be considered to be a creditor for purposes of this title.”.

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

20 “(6) BONA FIDE DISCOUNT POINTS.—

21 “(A) IN GENERAL.—For the purpose of  
22 determining the amount of points and fees  
23 under this subsection—

24 “(i) not more than 2 bona fide dis-  
25 count points payable by the consumer in

1 connection with the mortgage shall be ex-  
2 cluded, but only if the interest rate from  
3 which the interest rate on the mortgage  
4 will be discounted does not exceed by more  
5 than 1 percentage point the required net  
6 yield for a 90-day standard mandatory de-  
7 livery commitment for a reasonably com-  
8 parable loan from either the Federal Na-  
9 tional Mortgage Association or the Federal  
10 Home Loan Mortgage Corporation, which-  
11 ever is greater; and

12 “(ii) unless 2 bona fide discount  
13 points have been excluded under subpara-  
14 graph (A), not more than 1 bona fide dis-  
15 count point payable by the consumer in  
16 connection with the mortgage shall be ex-  
17 cluded, but only if the interest rate from  
18 which the interest rate on the mortgage  
19 will be discounted does not exceed by more  
20 than 2 percentage points the required net  
21 yield for a 90-day standard mandatory de-  
22 livery commitment for a reasonably com-  
23 parable loan from either the Federal Na-  
24 tional Mortgage Association or the Federal

1 Home Loan Mortgage Corporation, which-  
2 ever is greater.

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

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

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

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

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

24 (2) in paragraph (1)—

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

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

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

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

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

17 “(m) NO YIELD SPREAD PREMIUMS.—No person  
18 may provide, and no mortgage originator may receive, di-  
19 rectly or indirectly, any compensation for originating a  
20 home mortgage loan that is more costly than that for  
21 which the consumer qualifies, or that is based on, or varies  
22 with, the terms of any home mortgage loan.

23 “(n) ACCELERATION OF DEBT.—No high-cost mort-  
24 gage may contain a provision which permits the creditor,  
25 in its sole discretion, to accelerate the indebtedness, other

1 than in any case in which repayment of the loan has been  
2 accelerated by default, pursuant to a due-on-sale provi-  
3 sion, or for a breach of a material provision of the loan  
4 documents unrelated to the payment schedule.

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

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

12 “(2) any points or fees as defined in section  
13 103(aa)(4).

14 “(p) PROHIBITION ON EVASIONS, STRUCTURING OF  
15 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A  
16 creditor may not take any action in connection with a  
17 high-cost mortgage—

18 “(1) to structure a loan transaction as an open-  
19 end credit plan or another form of loan for the pur-  
20 pose and with the intent of evading the provisions of  
21 this title; or

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

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

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

15 **TITLE II—PROTECTIONS APPLI-**  
16 **CABLE TO SUBPRIME AND**  
17 **CERTAIN OTHER LOANS**

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

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

22 **“SEC. 129A. PROTECTIONS FOR SUBPRIME AND NONTRADI-**  
23 **TIONAL HOME LOANS.**

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

25                   “(1) **IN GENERAL.**—

1           “(A) IN GENERAL.—Before entering into  
2 or otherwise facilitating a subprime or nontradi-  
3 tional mortgage loan, each mortgage originator  
4 shall verify the reasonable ability of the bor-  
5 rower to pay the principal and interest on the  
6 loan and any real estate taxes and homeowner  
7 insurance fees and premiums.

8           “(B) CONSIDERATIONS.—A determination  
9 under subparagraph (A) shall include consider-  
10 ation of—

11                   “(i) the income of the borrower;

12                   “(ii) the credit history of the bor-  
13 rower;

14                   “(iii) the current obligations and em-  
15 ployment status of the borrower;

16                   “(iv) the debt-to-income ratio of the  
17 monthly gross income of the borrower, in-  
18 clusive of all scheduled or otherwise signifi-  
19 cant debt payments and total monthly  
20 housing payments, including taxes, prop-  
21 erty and private mortgage insurance, any  
22 required homeowner or condominium fees,  
23 and any subordinate mortgages, including  
24 those that will be made contemporaneously  
25 to the same borrower;

1                   “(v) the residual income of the bor-  
2                   rower; and

3                   “(vi) other available financial re-  
4                   sources, other than the equity of the bor-  
5                   rower in the principal dwelling that secures  
6                   or would secure the loan.

7                   “(2) VARIABLE MORTGAGE RATES.—In the case  
8                   of a subprime or nontraditional mortgage loan, with  
9                   respect to which the applicable rate of interest may  
10                  vary, for purposes of paragraph (1), the ability to  
11                  pay shall be determined based on the monthly pay-  
12                  ment that could be due from the borrower, using as  
13                  assumptions—

14                  “(A) the fully indexed interest rate;

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

18                  “(C) for products that permit negative am-  
19                  ortization, the initial loan amount plus any bal-  
20                  ance increase that may accrue from the nega-  
21                  tive amortization provision;

22                  “(D) that the loan is to be repaid in sub-  
23                  stantially equal monthly amortizing payments  
24                  for principal and interest over that period of  
25                  time which would be permitted after the con-

1           sumer has made lower payments, as permitted  
2           under the terms of the loan, and which includes  
3           any additions to principal that will result from  
4           such permitted lower payments, with no balloon  
5           payment, unless the loan contract requires a  
6           more rapid repayment schedule to be used in  
7           the calculation; and

8           “(E) the reasonably foreseeable capacity of  
9           the borrower to make payments, assuming mar-  
10          ket changes as to the contract index rate over  
11          the period of the loan, using, to make such as-  
12          sessment, a credible market rate determined ac-  
13          cording to regulations issued by the Board,  
14          which regulations shall require reasonable mar-  
15          ket expectations to be a factor.

16          “(3) REBUTTABLE PRESUMPTION.—

17                 “(A) IN GENERAL.—For purposes of this  
18                 subsection there is a rebuttable presumption  
19                 that a mortgage was made without regard to  
20                 repayment ability if, at the time at which the  
21                 loan was consummated, the total monthly debts  
22                 of the borrower, including total monthly hous-  
23                 ing payments, taxes, property, and private  
24                 mortgage insurance, any required homeowner or  
25                 condominium fees, and any subordinate mort-

1           gages, including those that will be made con-  
2           temporaneously to the same borrower, exceed  
3           45 percent of the monthly gross income of the  
4           borrower.

5           “(B) REBUTTAL.—To rebut the presump-  
6           tion of inability to repay under subparagraph  
7           (A) the creditor shall, at minimum, determine  
8           and consider the residual income of the bor-  
9           rower after payment of current expenses and  
10          proposed home loan payments, except that no  
11          presumption of ability to make the scheduled  
12          payments to repay the obligation shall arise  
13          solely from the fact that, at the time at which  
14          the loan is consummated, the total monthly  
15          debts of the borrower (including amounts owed  
16          under the loan) does not exceed 45 percent of  
17          the monthly gross income of the borrower.

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

1           “(c) PROHIBITION ON PREPAYMENT PENALTIES.—

2 No subprime or nontraditional mortgage loan may contain  
3 a provision that requires a consumer to pay a penalty for  
4 paying all or part of the principal before the date on which  
5 it is due.

6           “(d) PROHIBITION ON YIELD-SPREAD PREMIUMS.—

7 No person may provide, and no mortgage originator may  
8 receive, directly or indirectly, any compensation for origi-  
9 nating a subprime or nontraditional mortgage loan that  
10 is more costly than that for which the consumer qualifies,  
11 or that is based on, or varies with, the terms (other than  
12 the amount of loan principal) of any home mortgage loan.

13           “(e) NET TANGIBLE BENEFIT.—

14               “(1) IN GENERAL.—In accordance with regula-  
15 tions prescribed by the Board, no originator may  
16 make, provide, or arrange a subprime or nontradi-  
17 tional mortgage loan that involves a refinancing of  
18 a prior existing home mortgage loan, unless the new  
19 loan will provide a net tangible benefit to the con-  
20 sumer.

21               “(2) CERTAIN LOANS PROVIDING NO NET TAN-  
22 GIBLE BENEFIT.—For purposes of paragraph (1), a  
23 mortgage loan that involves refinancing of a prior  
24 existing mortgage loan shall not be considered to  
25 provide a net tangible benefit to the borrower if the

1 costs of the refinanced loan, including points, fees,  
2 and other charges, exceed the amount of any newly  
3 advanced principal, less the points, fees, and other  
4 charges, without any corresponding changes in the  
5 terms of the refinanced loan that are advantageous  
6 to the borrower.”.

7 **TITLE III—PROTECTIONS FOR**  
8 **ALL HOME LOAN BORROWERS**

9 **SEC. 301. MORTGAGE PROTECTIONS.**

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

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

14 “(a) DUTIES OF ALL MORTGAGE ORIGINATORS.—  
15 Each mortgage originator shall, with respect to each home  
16 mortgage loan and, in addition to requirements under  
17 other applicable provisions of Federal or State law—

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

20 “(2) follow reasonable and lawful instructions  
21 from the borrower;

22 “(3) act with reasonable skill, care, and dili-  
23 gence;

24 “(4) act in good faith and with fair dealing in  
25 any transaction, practice, or course of business in

1 connection with the originating of any home mort-  
2 gage loan; and

3 “(5) make reasonable efforts to secure a home  
4 mortgage loan that is appropriately advantageous to  
5 the borrower, considering all of the circumstances,  
6 including the product type, rates, charges, and re-  
7 payment terms of the loan.

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

13 “(1) act in the best interest of the borrower and  
14 in the utmost good faith toward the borrower, and  
15 refrain from compromising the rights or interests of  
16 the borrower in favor of the rights or interests of an-  
17 other, including a right or interest of the mortgage  
18 broker; and

19 “(2) clearly disclose to the borrower, not later  
20 than 3 days after receipt of the loan application, all  
21 material information that might reasonably affect  
22 the rights, interests, or ability of the borrower to re-  
23 ceive the borrower’s intended benefit from the home  
24 mortgage loan, including total compensation that the

1 broker would receive from any of the loan options  
2 that the broker presents to the borrower.

3 “(c) PROHIBITION ON STEERING.—

4 “(1) IN GENERAL.—In connection with a home  
5 mortgage loan, a mortgage originator may not steer,  
6 counsel, or direct a consumer to a loan with rates,  
7 charges, principal amount, or prepayment terms that  
8 are more costly than that for which the consumer  
9 qualifies.

10 “(2) DUTIES TO CONSUMERS.—If unable to  
11 suggest, offer, or recommend to a consumer a home  
12 mortgage loan that is not more expensive than that  
13 for which the consumer qualifies, a mortgage origi-  
14 nator shall disclose to the consumer—

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

19 “(B) the reasons that the products and  
20 services offered by the mortgage originator are  
21 not available to or reasonably advantageous for  
22 the consumer.

23 “(3) PROHIBITED CONDUCT.—In connection  
24 with a home mortgage loan, a mortgage originator  
25 may not—

1           “(A) mischaracterize the credit history of a  
2 consumer or the home loans available to a con-  
3 sumer;

4           “(B) mischaracterize or suborn  
5 mischaracterization of the appraised value of  
6 the property securing the extension of credit;  
7 and

8           “(C) if unable to suggest, offer, or rec-  
9 ommend to a consumer a loan that is not more  
10 expensive than that for which the consumer  
11 qualifies, discourage a consumer from seeking a  
12 home mortgage loan from another creditor or  
13 with another mortgage originator.

14       “(d) REQUIRED DOCUMENTATION.—

15           “(1) IN GENERAL.—With respect to any home  
16 mortgage loan, a mortgage originator shall base its  
17 determination of the ability of a consumer to pay  
18 on—

19           “(A) documentation of all sources of in-  
20 come verified by tax returns, payroll receipts,  
21 bank records, or the best and most appropriate  
22 form of documentation available, subject to  
23 such requirements and exceptions as deter-  
24 mined appropriate by the Board; and

1           “(B) the debt-to-income ratio and the re-  
2           sidual income of the consumer after payment of  
3           current expenses and proposed home loan pay-  
4           ments.

5           “(2) LIMITATION.—A statement provided by a  
6           consumer of the income and financial resources of  
7           the consumer, without other documentation referred  
8           to in paragraph (1), is not sufficient verification for  
9           purposes of assessing the ability of the consumer to  
10          pay.

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

12           “(1) IN GENERAL.—Except as provided in para-  
13          graph (2), no person may provide, and no mortgage  
14          originator may receive, directly or indirectly, any  
15          compensation for originating a home mortgage loan  
16          that is more costly than that for which the consumer  
17          qualifies, or that is based on, or varies with, the  
18          terms of any home mortgage loan (other than the  
19          amount of loan principal).

20          “(2) LIMITED EXCEPTION FOR NO-COST  
21          LOANS.—Notwithstanding paragraph (1), in a home  
22          mortgage loan, other than a high-cost mortgage  
23          loan, a subprime mortgage loan, or a nontraditional  
24          mortgage loan, a mortgage broker may receive com-

1           pensation in the form of an increased rate, but only  
2           if—

3                   “(A) the mortgage broker receives no other  
4           compensation, however denominated, directly or  
5           indirectly, from the consumer, creditor, or other  
6           mortgage originator;

7                   “(B) the loan does not include discount  
8           points, origination points, or rate reduction  
9           points, however denominated, or any payment  
10          reduction fee, however denominated;

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

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

17          “(f) RECOMMENDED DEFAULT.—No creditor shall  
18          recommend or encourage default on an existing loan or  
19          other debt prior to and in connection with the closing or  
20          planned closing of a mortgage loan that refinances all or  
21          any portion of such existing loan or debt.

22          “(g) EFFECT OF FORECLOSURE ON PREEXISTING  
23          LEASE.—

24                   “(1) IN GENERAL.—Notwithstanding any other  
25          provision of law, in the case of any foreclosure with

1       respect to a home mortgage loan entered into after  
2       the date of enactment of this Act, any successor in  
3       interest in such property pursuant to the foreclosure  
4       shall assume such interest subject to—

5               “(A) the provision, by the successor in in-  
6       terest, of a notice to vacate to any bona fide  
7       tenant at least 90 days before the effective date  
8       of the notice to vacate; and

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

11               “(i) under any bona fide lease entered  
12       into before the notice of foreclosure to oc-  
13       cupy the premises until the end of the re-  
14       maining term of the lease; or

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

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

22               “(A) the mortgagor under the contract is  
23       not the tenant;

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

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

4                   **TITLE IV—GOOD FAITH AND**  
5                   **FAIR DEALING IN APPRAISALS**

6                   **SEC. 401. DUTIES OF APPRAISERS.**

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

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

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

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

15                                 “(A) is certified or licensed by the State in  
16                                 which the property to be appraised is located;  
17                                 and

18                                 “(B) performs each appraisal in con-  
19                                 formity with the Uniform Standards of Profes-  
20                                 sional Appraisal Practice and title XI of the Fi-  
21                                 nancial Institutions Reform, Recovery, and En-  
22                                 forcement Act of 1989, and the regulations pre-  
23                                 scribed under such title, as in effect on the date  
24                                 of the appraisal.

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

7                   “(A) the bond shall inure first to the ben-  
8                   efit of the homeowners who have claims against  
9                   the appraiser under this title or any other ap-  
10                  plicable provision of law, and second to the ben-  
11                  efit of originating creditors that complied with  
12                  their duty of good faith and fair dealing in ac-  
13                  cordance with this title; and

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

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

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

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

4           “(c) DUTIES OF APPRAISERS.—

5           “(1) OBJECTIVE APPRAISALS.—All appraisals  
6 carried out by an appraiser shall be accurate and  
7 reasonable. An appraiser shall have no direct or indi-  
8 rect interest in the property to be appraised, the real  
9 estate transaction prompting such appraisal, or the  
10 home loan involved in such transaction.

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

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

18           “(A) seek to influence an appraiser or oth-  
19 erwise to encourage a targeted value in order to  
20 facilitate the making or pricing of the home  
21 mortgage loan; or

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

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

7           “(d) APPRAISAL REPORT.—In any case in which an  
8           appraisal is performed in connection with a home mort-  
9           gage loan, the lender or loan servicer shall provide a copy  
10          of the appraisal report to an applicant for a home mort-  
11          gage loan, whether credit is granted, denied, or the appli-  
12          cation was withdrawn. The first copy of this report shall  
13          be provided to the applicant without charge.

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

17                 “(1) REQUIRED MODIFICATION.—If a retrospec-  
18                 tive appraisal determines that the appraisal upon  
19                 which the home loan was based exceeded the true  
20                 market value by 10 percent or more, the holder of  
21                 the loan shall modify the loan and recast the loan  
22                 ab initio to a loan amount that is at the same loan-  
23                 to-value which the original loan purported to be. All  
24                 payments made prior to the recasting of such loan  
25                 shall be applied to the reduced loan amount.



1           “(C) in the case of any successful action to  
2           enforce the foregoing liability, the costs of the  
3           action, together with a reasonable attorney’s fee  
4           as determined by the court.

5           “(2) JURISDICTION.—Any action by a borrower  
6           for a failure to comply with the requirements of this  
7           section may be brought in any United States district  
8           court, or in any other court of competent jurisdic-  
9           tion, not later than 3 years from the date of the oc-  
10          currence of such violation. This subsection does not  
11          bar a person from asserting a violation of this sec-  
12          tion in an action to collect the debt owed on a home  
13          mortgage loan, or foreclose upon the home securing  
14          a home mortgage loan, or to stop a foreclosure upon  
15          that home, which was brought more than 3 years  
16          after the date of the occurrence of the violation as  
17          a matter of defense by recoupment or set-off in such  
18          action. An action under this section does not create  
19          an independent basis for removal of an action to a  
20          United States district court.

21          “(3) STATE ATTORNEY GENERAL ENFORCE-  
22          MENT.—An action to enforce a violation of this sec-  
23          tion may also be brought by the appropriate State  
24          attorney general in any appropriate United States  
25          district court, or any other court of competent juris-

1 diction, not later than 3 years after the date on  
2 which the violation occurs. An action under this sec-  
3 tion does not create an independent basis for re-  
4 moval of an action to a United States district  
5 court.”.

6 **TITLE V—GOOD FAITH AND FAIR**  
7 **DEALING IN HOME LOAN**  
8 **SERVICING**

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

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

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

14 “(a) STANDARD OF CARE.—

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

21 “(2) FAIR DEALING.—Each lender and loan  
22 servicer shall, in addition to the duties imposed by  
23 otherwise applicable provisions of Federal or State  
24 law, with respect to each home mortgage loan, in-

1 cluding any home mortgage loan in default or in  
2 which the homeowner has filed for bankruptcy—

3 “(A) act with reasonable skill, care, dili-  
4 gence, and in accordance with the highest  
5 standards; and

6 “(B) act in good faith and with fair deal-  
7 ing in any transaction, practice, or course of  
8 business associated with the home mortgage  
9 loan.

10 “(b) RULES FOR ASSESSMENT OF FEE.—

11 “(1) IN GENERAL.—No home mortgage loan  
12 contract may require, nor may any lender or loan  
13 servicer assess or receive, any fees or charges other  
14 than interest, late fees as specifically authorized in  
15 this section, or fees assessed for nonsufficient funds,  
16 and charges allowed pursuant to subsection  
17 (i)(1)(B), until the home mortgage loan is the sub-  
18 ject of a foreclosure proceeding and the debt on such  
19 loan has been accelerated.

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

22 “(A) reasonable;

23 “(B) for services actually rendered; and

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

1           “(3) ASSESSMENT AND DISCLOSURE.—

2                   “(A) IN GENERAL.—Any permissible fee or  
3 charge described under paragraph (1) shall  
4 be—

5                           “(i) assessed not later than 30 days  
6 after the date on which the fee was ac-  
7 crued; and

8                           “(ii) explained clearly and conspicu-  
9 ously in the next monthly accounting state-  
10 ment provided to the borrower designated  
11 in the home mortgage loan contract.

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

16           “(4) REQUIRED STATEMENTS.—Each month a  
17 lender or loan servicer shall provide to each borrower  
18 designated in a home mortgage loan contract en-  
19 tered into by such lender or loan servicer a periodic  
20 statement that clearly and in plain english ex-  
21 plains—

22                   “(A) the application of the prior month’s  
23 payment by the borrower, including the alloca-  
24 tion of the payment to interest, principal, es-  
25 crow, and fees;

1           “(B) the status of the escrow account held  
2           on behalf of the borrower, including the pay-  
3           ments into and from the escrow account; and

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

7           “(c) MAXIMUM ALLOWABLE LATE FEES CHARGED  
8 AFTER LOAN CLOSING.—

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

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

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

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

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

24           “(2) RULE OF CONSTRUCTION.—For purposes  
25          of this subsection, payments on any amount due on

1 a home mortgage loan shall be applied first to cur-  
2 rent installments, then to delinquent payments, and  
3 then to delinquency charges.

4 “(3) COORDINATION WITH SUBSEQUENT LATE  
5 FEES.—If a home loan mortgage payment is other-  
6 wise a full payment for the applicable period and is  
7 paid on its due date or within an applicable grace  
8 period, and the only delinquency or insufficiency of  
9 payment is attributable to a late fee or delinquency  
10 charge assessed on an earlier payment, no late fee  
11 or delinquency charge may be imposed on such pay-  
12 ment.

13 “(d) PROMPT CREDITING OF PAYMENTS RE-  
14 QUIRED.—Each home loan mortgage payment amount re-  
15 ceived by a lender or a loan servicer shall be accepted and  
16 credited on the date received. Such payments shall be  
17 credited to interest and principal due on the home mort-  
18 gage loan before crediting the payment to taxes, insur-  
19 ance, or fees.

20 “(e) COLLATERAL PROTECTION INSURANCE.—

21 “(1) IN GENERAL.—A lender or loan servicer  
22 may not charge any borrower designated in a home  
23 mortgage loan contract for collateral protection in-  
24 surance, unless—

1           “(A) the home mortgage loan contract re-  
2           quires the borrower to maintain insurance on  
3           the collateral and clearly delineates—

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

6                   “(ii) that such insurance may not pro-  
7                   tect the interests of the borrower and may  
8                   be substantially more expensive than insur-  
9                   ance that the borrower could purchase  
10                  independently; and

11                  “(iii) that the borrower will be  
12                  charged for the cost of the insurance;

13           “(B) the lender or loan servicer makes  
14           every effort to avoid the necessity of requiring  
15           collateral protection insurance, including at  
16           least written notice and telephone communica-  
17           tions with the borrower and the insurance agent  
18           of record regarding the—

19                   “(i) obligation of the borrower to  
20                   maintain property insurance; and

21                   “(ii) additional cost to the borrower  
22                   on a monthly basis if collateral protection  
23                   insurance is required;

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

4                   “(i) notice that the—

5                           “(I) placement of the insurance  
6                   is imminent;

7                           “(II) costs of the insurance will  
8                   be paid by the borrower; and

9                           “(III) the insurance will not pro-  
10           tect the borrower from loss;

11                   “(ii) notice of the amount of the new  
12           monthly payment; and

13                   “(iii) instructions on the steps that  
14           the borrower may take to avoid such  
15           charge; and

16                   “(D) charges for such insurance are bona  
17           fide and reasonable.

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

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

7                   “(A) explaining the imposition of the new  
8                   charges for such insurance; and

9                   “(B) providing information on what the  
10           borrower can do to obviate the need for such in-  
11           surance.

12           “(f) OBLIGATIONS OF LENDER OR LOAN SERVICER  
13 TO HANDLE ESCROW FUNDS.—A lender or loan servicer  
14 shall make all payments from the escrow account held for  
15 the borrower designated in a home mortgage loan contract  
16 for insurance, taxes, and other charges with respect to the  
17 property secured by such contract in a timely manner to  
18 ensure that no late penalties are assessed and that no  
19 other negative consequences result, regardless of whether  
20 the loan is delinquent, unless—

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

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

1           “(g) INFORMATION EXCHANGE AND DISPUTE RE-  
2 QUIREMENTS.—

3           “(1) MANDATORY RESPONSE TO BORROWERS’  
4 REQUESTS.—

5           “(A) IN GENERAL.—A lender or loan  
6 servicer shall respond to any request for infor-  
7 mation about a home mortgage loan or for reso-  
8 lution of any dispute involving a home mortgage  
9 loan submitted by a borrower designated in a  
10 home mortgage loan contract entered into by  
11 such lender or loan servicer.

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

14           “(i) without cost to the requesting  
15 borrower; and

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

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

21           “(i) providing—

22           “(I) the status of the borrowers  
23 account, including whether the ac-  
24 count is current, or if not, the date  
25 the account went into default;



1 owner or assignee of the home mortgage  
2 loan; and

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

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

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

21 “(h) MANDATORY LOSS MITIGATION.—

22 “(1) IN GENERAL.—A lender or loan servicer  
23 shall not initiate a foreclosure of a home mortgage  
24 loan unless that lender or loan servicer has made a  
25 good faith review of the financial situation of the

1 borrower designated in such home mortgage loan  
2 contract and has offered, whenever feasible, a repay-  
3 ment plan, forbearance, loan modification, or other  
4 option to assist the borrower in bringing his or her  
5 delinquent account into arrears. In the event that  
6 such options are not feasible, the lender or loan  
7 servicer shall refer the borrower to a housing coun-  
8 seling agency approved by the Secretary of Housing  
9 and Urban Development under section 106(d) of the  
10 Housing and Urban Development Act of 1968 (12  
11 U.S.C. 1701x(d)).

12 “(2) REPORTS ON LOSS MITIGATION ACTIVI-  
13 TIES.—

14 “(A) IN GENERAL.—Each servicer shall re-  
15 port to the Board once every 3 months on the  
16 extent and results of its loss mitigation activi-  
17 ties.

18 “(B) FORM AND CONTENT.—The Board  
19 shall prescribe, by regulation, the form and con-  
20 tent of the reports required by this paragraph  
21 which shall include—

22 “(i) categories of measures that result  
23 in modifications of loan provisions, includ-  
24 ing payment schedules, loan principle, and  
25 loan interest;

1                   “(ii) forbearance agreements;  
2                   “(iii) acceptance of a reduced amount  
3                   in satisfaction of the loan;  
4                   “(iv) assumption of the loan;  
5                   “(v) pre-foreclosure sales; and  
6                   “(vi) deeds in lieu of foreclosure, and  
7                   foreclosures.

8                   “(C) BASIS.—Data required by this para-  
9                   graph shall be reported on a servicer and lender  
10                  basis.

11                  “(D) PUBLIC AVAILABILITY.—The Board  
12                  shall make data received under this paragraph  
13                  publicly available, and shall annually report to  
14                  Congress on servicer loss mitigation activities.

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

19                  “(i) PAYOFF STATEMENTS.—

20                  “(1) PROHIBITION ON FEES.—

21                  “(A) IN GENERAL.—No lender or loan  
22                  servicer (or any third party acting on behalf of  
23                  such lender or loan servicer) may charge a fee  
24                  for transmitting to any borrower the amount

1 due to pay off the outstanding balance on the  
2 home mortgage loan of such borrower.

3 “(B) EXCEPTION.—After a lender or loan  
4 servicer (or any third party acting on behalf of  
5 such lender or loan servicer) has provided the  
6 information described in subparagraph (A)  
7 without charge on 4 occasions during a cal-  
8 endar year, the lender or loan servicer (or any  
9 third party acting on behalf of such lender or  
10 loan servicer) may thereafter charge a reason-  
11 able fee for providing such information during  
12 the remainder of the calendar year.

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

18 “(j) CIVIL LIABILITY.—

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

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

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

2           “(C) in the case of any successful action to  
3           enforce the foregoing liability the costs of the  
4           action, together with a reasonable attorney’s fee  
5           as determined by the court.

6           “(2) JURISDICTION.—Any action by a borrower  
7           for a failure to comply with the requirements of this  
8           section may be brought in any United States district  
9           court, or in any other court of competent jurisdic-  
10          tion, not later than 3 years from the date of the oc-  
11          currence of such violation. This subsection does not  
12          bar a person from asserting a violation of this sec-  
13          tion in an action by a lender or loan servicer to col-  
14          lect the debt owed on a home mortgage loan, or fore-  
15          close upon the home securing a home mortgage loan,  
16          or to stop a foreclosure upon that home, which was  
17          brought more than 3 years after the date of the oc-  
18          currence of the violation as a matter of defense by  
19          recoupment or set-off in such action. An action  
20          under this section does not create an independent  
21          basis for removal of an action to a United States  
22          district court.

23          “(3) STATE ATTORNEY GENERAL ENFORCE-  
24          MENT.—An action to enforce a violation of this sec-  
25          tion may also be brought by the appropriate State

1 attorney general in any appropriate United States  
2 district court, or any other court of competent juris-  
3 diction, not later than 3 years after the date on  
4 which the violation occurs. An action under this sec-  
5 tion does not create an independent basis for re-  
6 moval of an action to a United States district court.

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

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

13 “(2) LOAN SERVICER.—The term ‘loan servicer’  
14 has the same meaning as the term ‘servicer’ in sec-  
15 tion 6(i)(2) of the Real Estate Settlement Proce-  
16 dures Act of 1974 (12 U.S.C. 2605(i)(2)).”.

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

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

21 “(H) A statement explaining—

22 “(i) whether the account of the bor-  
23 rower is current, or if the account is not  
24 current, an explanation of the reason and  
25 date the account went into default;

1                   “(ii) the current balance due on the  
2                   loan, including the principal due, an expla-  
3                   nation of the escrow balance, and whether  
4                   there are any escrow deficiencies or short-  
5                   ages; and

6                   “(iii) a full payment history of the  
7                   borrower which shows in a clear and easily  
8                   understandable manner, all of the activity  
9                   on the home mortgage loan since the origi-  
10                  nation of the loan or the prior transfer of  
11                  servicing, including the escrow account,  
12                  and the application of payments.”.

13 **SEC. 503. EFFECTIVE DATE.**

14                  This title and the amendments made by this title  
15 shall become effective 90 days after the date of enactment  
16 of this Act, and shall apply to loan servicers and loan serv-  
17 icing activities on and after that effective date.

18                   **TITLE VI—FORECLOSURE**  
19                   **PREVENTION COUNSELING**

20 **SEC. 601. FORECLOSURE PREVENTION COUNSELING.**

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

24                   “(6) FORECLOSURE PREVENTION COUN-  
25 SELING.—

1                   “(A) NOTIFICATION AT TIME OF SETTLE-  
2                   MENT OF AVAILABILITY OF COUNSELING UPON  
3                   DELINQUENCY.—

4                   “(i) IN GENERAL.—At the time of set-  
5                   tlement of any real estate transaction in-  
6                   volving a qualified mortgage, and together  
7                   with the final signed loan documents, a  
8                   lender or loan servicer shall provide to  
9                   each eligible homeowner a plain language  
10                  statement in conspicuous 16-point type or  
11                  larger which shall include the following:

12                  “(I) COUNSELING STATEMENT.—

13                  A counseling statement that reads as  
14                  follows:

15                  ‘If you are more than 30 days late on your  
16                  mortgage payments, your lender or loan  
17                  servicer shall notify you of housing coun-  
18                  seling agencies approved by the Secretary  
19                  of Housing and Urban Development that  
20                  may be able to assist you. Before you miss  
21                  another mortgage payment, you are  
22                  strongly encouraged to contact your lender  
23                  or loan servicer or 1 of these agencies for  
24                  assistance. If you are more than 60 days  
25                  late on your mortgage payments, your

1 lender or loan servicer shall send you a  
2 second notification containing this infor-  
3 mation. In addition, if you are more than  
4 60 days late on your mortgage payment,  
5 your lender or loan servicer shall notify an  
6 approved housing counseling agency so  
7 that such agency can contact you regard-  
8 ing any assistance it may be able to pro-  
9 vide.

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

17 “(II) COUNSELING AGENCY LIST-  
18 ING.—A listing of at least 5 national,  
19 State and local housing counseling  
20 agencies approved by the Secretary. It  
21 is the responsibility of the lender or  
22 loan servicer to ensure that—

23 “(aa) if fewer than 5 ap-  
24 proved housing counseling agen-  
25 cies serve the area where the eli-

1           eligible homeowner is located, all  
2           available housing counseling  
3           agencies in that area shall be list-  
4           ed; and

5                   “(bb) the list shall include  
6           options of housing counseling  
7           agencies that provide in-person  
8           counseling, as well as telephone  
9           counseling.

10                   “(ii) NOTICE.—Any notice required to  
11           be sent pursuant to this subparagraph  
12           shall be sent by first class mail to the last  
13           known address of the eligible homeowner  
14           and if different, to the residence which is  
15           the subject of the mortgage. The notice  
16           shall also be sent by registered or certified  
17           mail.

18                   “(B) NOTIFICATION OF AVAILABILITY OF  
19           COUNSELING UPON DELINQUENCY AFTER 60  
20           DAYS.—

21                   “(i) IN GENERAL.—Before a lender or  
22           loan servicer accelerates the maturity of a  
23           mortgage obligation, commences legal ac-  
24           tion, including mortgage foreclosure to re-  
25           cover under the obligation, or takes posses-

1 sion of a security of the mortgage debtor  
2 for the mortgage obligation, the lender or  
3 loan servicer is required to give notice to  
4 an eligible homeowner in conspicuous 16-  
5 point type or larger which shall include the  
6 following:

7 “(I) HOUSING COUNSELING IN-  
8 FORMATION IN NOTICE FORECLOSURE  
9 STATEMENT.—A foreclosure notice  
10 that includes the following statement  
11 (blank lines to be filled in by the lend-  
12 er or loan servicer, as appropriate):

13 ‘This is an official notice that the mort-  
14 gage on your home is in default, and the  
15 lender intends to foreclose in \_\_\_\_\_ days.  
16 The name, address, and phone number of  
17 housing counseling agencies approved by  
18 the Secretary of Housing and Urban De-  
19 velopment serving your county are listed at  
20 the end of this notice.

21 ‘In addition, your lender or loan servicer  
22 shall notify such an approved housing  
23 counseling agency of your default so that  
24 such agency can contact you regarding any  
25 assistance it may be able to provide. You

1 have the right to request that your lender  
2 or loan servicer not share your information  
3 with a housing counseling agency.  
4 ‘You can also choose an approved housing  
5 counseling agency from the list provided  
6 with this notice to assist you. By calling  
7 one of these approved housing counseling  
8 agencies and signing an authorization  
9 form, your agency of choice will notify your  
10 lender or loan servicer of your decision.’.

11 “(II) COUNSELING AGENCY LIST-  
12 ING.—A listing of at least 5 State and  
13 local housing counseling agencies ap-  
14 proved by the Secretary. It is the re-  
15 sponsibility of the lender or loan  
16 servicer to ensure that—

17 “(aa) if fewer than 5 ap-  
18 proved housing counseling agen-  
19 cies serve the area where the eli-  
20 gible homeowner is located, all  
21 available housing counseling  
22 agencies in that area shall be list-  
23 ed; and

24 “(bb) the list shall include  
25 options of housing counseling

1 agencies that provide in-person  
2 counseling, as well as telephone  
3 counseling.

4 “(ii) NOTICE.—Any notice required to  
5 be sent pursuant to this subparagraph  
6 shall be sent by first class mail to the last  
7 known address of the eligible homeowner  
8 and if different, to the residence which is  
9 the subject of the mortgage. The notice  
10 shall also be sent by registered or certified  
11 mail

12 “(iii) TIMING.—Any notice required to  
13 be sent pursuant to this subparagraph  
14 shall be sent at such time as the eligible  
15 homeowner is at least 60 days contrac-  
16 tually delinquent in his or her mortgage  
17 payments or is in violation of other provi-  
18 sions of the mortgage.

19 “(iv) INCLUSION IN ALL FORE-  
20 CLOSURE MAILINGS.—The foreclosure no-  
21 tice and counseling agency listing required  
22 under subclauses (I) and (II) of clause (i)  
23 shall be included with all foreclosure mail-  
24 ings sent to an eligible homeowner.

1           “(C) NO FORECLOSURE IF APPLICATION  
2           FOR FORECLOSURE PREVENTION SERVICES.—A  
3           lender or loan servicer shall not initiate or con-  
4           tinue a foreclosure—

5                   “(i) upon receipt of a written con-  
6                   firmation that an eligible homeowner has  
7                   engaged a housing counseling agency ap-  
8                   proved by the Secretary for the purposes of  
9                   receiving foreclosure prevention services  
10                  and assistance; and

11                   “(ii) for the 45-day period beginning  
12                  on the date of receipt of such written con-  
13                  firmation.

14           “(D) DUTIES.—

15                   “(i) DUTY OF LENDER OR SERVICER  
16                  TO FORWARD INFORMATION.—

17                   “(I) IN GENERAL.—Each lender  
18                  or loan servicer shall forward the con-  
19                  tact information of each eligible home-  
20                  owner who has borrowed amounts  
21                  from such lender or loan servicer for  
22                  a qualified mortgage to a housing  
23                  counseling agency approved by the  
24                  Secretary in the event the mortgage  
25                  payment of that homeowner is or be-

1 comes more than 60 days late so that  
2 the housing counseling agency can at-  
3 tempt to reach the homeowner.

4 “(II) PRE-EXISTING RELATION-  
5 SHIP.—In the case that an eligible  
6 homeowner has a pre-existing rela-  
7 tionship with a housing counseling  
8 agency approved by the Secretary, or  
9 a preference for one agency over an-  
10 other, the homeowner may indicate as  
11 such—

12 “(aa) at the time of settle-  
13 ment of the real estate trans-  
14 action involving a qualified mort-  
15 gage issued to that homeowner;

16 “(bb) by providing written  
17 correspondence to the lender or  
18 loan servicer for such qualified  
19 mortgage stating which housing  
20 counseling agency the homeowner  
21 would like to work with in case  
22 the homeowner should become  
23 delinquent in his or her mortgage  
24 payments; or

1                   “(cc) by signing an author-  
2                   ization form at the office of such  
3                   housing counseling agency of  
4                   choice, which form shall then be  
5                   sent to the lender or loan  
6                   servicer.

7                   “(III) RULES OF CONSTRU-  
8                   TION.—In order to carry out the pro-  
9                   visions of this paragraph, lenders and  
10                  loan servicers may form relationships  
11                  with housing counseling agencies ap-  
12                  proved by the Secretary to provide  
13                  services to eligible homeowners. Not-  
14                  withstanding the previous sentence,  
15                  exclusive relationships between any  
16                  such parties are strictly prohibited.

17                  “(ii) AGENCY REPRESENTATION OF  
18                  HOMEOWNER.—When a housing counseling  
19                  agency provides a lender or loan servicer  
20                  with a signed authorization form to rep-  
21                  resent an eligible homeowner, the lender or  
22                  servicer shall respond to requests from  
23                  that agency for information within 3 days,  
24                  and to any workout proposals of that agen-  
25                  cy within 7 days. A lender or loan servicer

1           may not refuse to work with a housing  
2           counselor from a housing counseling agen-  
3           cy approved by the Secretary, if a signed  
4           authorization form an eligible homeowner  
5           has been received by that lender or loan  
6           servicer (faxed, scanned, and other elec-  
7           tronically reproduced authorizations of  
8           such authorization form shall also be ac-  
9           ceptable).

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

24           “(iv) REQUIRED RESOLUTIONS.—A  
25           lender or loan servicer shall be required to

1 consider all loss mitigation resolutions for  
2 each case of foreclosure initiated by the  
3 lender or loan servicer, including the modi-  
4 fication of a qualified mortgage to a more  
5 permanent, affordable interest rate.

6 “(v) REQUIRED DISCLOSURES TO  
7 HOUSING COUNSELING AGENCIES.—A lend-  
8 er or loan servicer shall disclose to any  
9 housing counseling agency approved by the  
10 Secretary and authorized to represent an  
11 eligible homeowner the name of the origi-  
12 nator of the loans as stated in the Pooling  
13 and Servicing Agreement, and the name of  
14 the pool Trustee.

15 “(E) REIMBURSEMENTS FOR HOUSING  
16 COUNSELING SERVICES.—

17 “(i) IN GENERAL.—A lender or loan  
18 servicer of a qualified mortgage made to  
19 an eligible homeowner shall reimburse the  
20 housing counseling agency that is author-  
21 ized to represent the homeowner upon the  
22 rendering of services by such agency to the  
23 homeowner under this paragraph.

24 “(ii) REIMBURSEMENT.—A lender or  
25 loan servicer shall seek reimbursement for

1 the payment of housing counseling services  
2 as described under clause (i) from the  
3 Trust, if any, designated in the lender or  
4 servicer's Pooling and Servicing Agree-  
5 ment.

6 “(F) AVAILABILITY OF WAIVER.—

7 “(i) IN GENERAL.—An eligible home-  
8 owner may choose not to receive informa-  
9 tion regarding State and local housing  
10 counseling agencies approved by the Sec-  
11 retary, or to have their information shared  
12 with State and local housing counseling  
13 agencies, or both, at any time after de-  
14 fault. An eligible homeowner may also sub-  
15 mit a signed letter to their lender or loan  
16 servicer at any time after default to waive  
17 their right to receive information regarding  
18 State and local housing counseling agen-  
19 cies.

20 “(ii) LIMITATION ON WAIVER.—The  
21 waiver described under clause (i) shall only  
22 apply to the receipt of information regard-  
23 ing housing counseling agencies located in  
24 the area where the homeowner is located or  
25 the sharing of the homeowner's personal

1 information with such agencies. The waiver  
2 described under clause (i) shall not apply  
3 to the right of the homeowner to seek fore-  
4 closure prevention counseling, nor does it  
5 relieve the lender or loan servicer of the re-  
6 quirement to notify the homeowner of the  
7 availability of counseling as described in  
8 this section.

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

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

14 “(ii) LOAN SERVICER.—The term  
15 ‘loan servicer’ has the same meaning as  
16 the term ‘servicer’ as that term is defined  
17 in section 6(i)(2) of the Real Estate Settle-  
18 ment Procedures Act (12 U.S.C.  
19 2605(i)(2)).”.

## 20 **TITLE VII—REMEDIES AND** 21 **ENFORCEMENT**

### 22 **SEC. 701. MATERIAL DISCLOSURES AND VIOLATIONS.**

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

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

3 (2) striking “and the disclosures required by  
4 section 129(a)” and inserting “and the provisions of  
5 sections 129, 129A, and 129B.”.

6 (b) CONSEQUENCES OF FAILURE TO COMPLY.—Sec-  
7 tion 129(j) of the Truth in Lending Act (15 U.S.C.  
8 1639(j)) is amended by striking “contains a provision pro-  
9 hibited by” and inserting “violates a provision of”.

10 **SEC. 702. RIGHT OF RESCISSION.**

11 (a) TIME LIMIT FOR EXERCISE OF RIGHT.—Section  
12 125(f) of the Truth in Lending Act (15 U.S.C. 1635(f))  
13 is amended by striking “An obligor’s right of rescission  
14 shall expire three years after the date of consummation”  
15 and inserting “An obligor’s right of rescission shall extend  
16 to 6 years from the date of consummation”.

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

1 ceed 10 years from the date of the consummation of the  
2 transaction.”.

3 **SEC. 703. CIVIL LIABILITY.**

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

6 (1) striking “creditor” and inserting “creditor  
7 or mortgage broker” in each place that term ap-  
8 pears;

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

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

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

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

22 (2) by inserting after the first sentence the fol-  
23 lowing new sentence: “Any action under this section  
24 with respect to any violation of section 129, 129A,  
25 or 129B may be brought in any United States dis-

1       trict court, or in any other court of competent juris-  
2       diction, within 3 years from the date of the occur-  
3       rence of the violation.”; and

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

7       (c) ENFORCEMENT BY STATE ATTORNEYS GEN-  
8       ERAL.—An action to enforce a violation of section 129,  
9       129A, or 129B of the Truth in Lending Act, as amended  
10      and added by this Act, may also be brought by the appro-  
11      priate State attorney general in any appropriate United  
12      States district court, or any other court of competent ju-  
13      risdiction, not later than 3 years after the date on which  
14      the violation occurs. An action under this subsection does  
15      not create an independent basis for removal of an action  
16      to a United States district court.

17      (d) OTHER CHANGES TO CIVIL LIABILITY.—

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

21                       (A) in subparagraph (A)(iii), by—

22                               (i) striking “\$200” and inserting  
23                               “\$500”;

24                               (ii) striking “\$2,000” and inserting  
25                               “\$5,000”; and

1 (iii) adding before the semicolon at  
2 the end the following: “, such amount to  
3 adjusted annually based on the consumer  
4 price index, to maintain current value.”;  
5 and

6 (B) in subparagraph (B), by striking  
7 “500,000” and inserting “\$5,000,000”.

8 (2) FAILURE TO COMPLY WITH SECTION  
9 129A.—Section 130(a)(4) of the Truth in Lending  
10 Act (15 U.S.C. 1640(a)(4)) is amended by inserting  
11 “or 129A” after “129”.

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

13 Section 131 of the Truth in Lending Act (15 U.S.C.  
14 1641) is amended by—

15 (1) by redesignating subsection (f) as sub-  
16 section (g); and

17 (2) by inserting after subsection (e) the fol-  
18 lowing new subsection:

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

21 “(1) SUBPRIME OR NONTRADITIONAL LOANS.—

22 “(A) INDIVIDUAL ACTIONS.—Notwith-  
23 standing subsections (a) and (e), any person  
24 who purchases, holds, or is otherwise assigned  
25 a mortgage or similar security interest in con-

1           nection with a subprime or nontraditional home  
2           mortgage loan, other than a loan described  
3           under section 103(aa), shall be liable in an indi-  
4           vidual action for remedies available under sec-  
5           tion 130 for violations of sections 129A and  
6           129B that the consumer could assert against  
7           the creditor or mortgage originator originating  
8           that mortgage.

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

1           “(2) OTHER LOANS.—Notwithstanding sub-  
2 sections (a) and (e), any person who purchases,  
3 holds, or is otherwise assigned a mortgage or similar  
4 security interest in connection with home mortgage  
5 loan other than a loan described under section  
6 103(aa), a subprime, or a nontraditional loan, shall  
7 be liable only in an individual action for remedies  
8 available under section 130 for violations of section  
9 129B that the consumer could assert against the  
10 creditor or mortgage originator originating that  
11 mortgage, provided that such liability is limited to  
12 the amount of all remaining indebtedness and the  
13 total amount paid in connection with the transaction  
14 plus amounts required to recover costs, including  
15 reasonable attorneys’ fees.”.

16 **SEC. 705. REMEDY IN LIEU OF RESCISSION FOR CERTAIN**  
17 **VIOLATIONS.**

18           Section 131 of the Truth in Lending Act (15 U.S.C.  
19 1641) is further amended by adding at the end the fol-  
20 lowing new subsection:

21           “(h) REMEDY IN LIEU OF RESCISSION FOR CERTAIN  
22 VIOLATIONS.—At the election of a consumer entitled to  
23 rescind for violations of sections 129, 129A, or 129B, any  
24 person (including a creditor) who holds, purchases, or is

1 otherwise assigned a mortgage or similar security interest  
2 in connection with home mortgage loan—

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

6 “(2) shall modify or refinance the loan, at no  
7 cost to the consumer, the resulting balance of which  
8 shall provide terms that would have satisfied the re-  
9 quirements of sections 129, 129A, or 129B at the  
10 origination of the loan and to pay costs and reason-  
11 able attorneys fees.”.

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

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

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

21 **SEC. 707. LENDER LIABILITY.**

22 Section 130 of the Truth in Lending Act (15 U.S.C.  
23 1640) is amended by adding at the end the following new  
24 subsection:

25 “(i) **LENDER LIABILITY.**—

1           “(1) TRANSITIVE LIABILITY FOR SUBPRIME  
2 LOAN.—In any case in which a mortgage broker  
3 sells or delivers a high-cost mortgage, a subprime  
4 mortgage, or a nontraditional mortgage, a creditor  
5 shall be liable for the acts, omissions, and represen-  
6 tations made by the mortgage broker in connection  
7 with such home mortgage loan.

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

## 16       **TITLE VIII—OTHER BANKING** 17           **AGENCY AUTHORITY**

18       **SEC. 801. INCLUSION OF ALL BANKING AGENCIES IN THE**  
19           **REGULATORY AUTHORITY UNDER THE FED-**  
20           **ERAL TRADE COMMISSION ACT WITH RE-**  
21           **SPECT TO DEPOSITORY INSTITUTIONS.**

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

25           (1) in paragraph (1)—

1 (A) in the first sentence—

2 (i) by striking “banks or savings and  
3 loan institutions described in paragraph  
4 (3), each agency specified in paragraph (2)  
5 or (3) of this subsection shall establish”  
6 and inserting “depository institutions and  
7 Federal credit unions, the Federal banking  
8 agencies and the National Credit Union  
9 Administration Board shall each estab-  
10 lish”; and

11 (ii) by striking “banks or savings and  
12 loan institutions described in paragraph  
13 (3), subject to its jurisdiction” and insert-  
14 ing “depository institutions or Federal  
15 credit unions subject to the jurisdiction of  
16 such agency or Board”;

17 (B) in the second sentence, by striking  
18 “The Board of Governors of the Federal Re-  
19 serve System (with respect to banks) and the  
20 Federal Home Loan Bank Board (with respect  
21 to savings and loan institutions described in  
22 paragraph (3))” and inserting “Each Federal  
23 banking agency (with respect to the depository  
24 institutions each such agency supervises)”;

25 (C) in the third sentence—

1 (i) by striking “each such Board” and  
2 inserting “each such banking agency and  
3 the National Credit Union Administration  
4 Board”;

5 (ii) by striking “banks or savings and  
6 loan institutions described in paragraph  
7 (3)” each place such term appears and in-  
8 serting “depository institutions subject to  
9 the jurisdiction of such agency”;

10 (iii) by striking “(A) any such Board”  
11 and inserting “(A) any such Federal bank-  
12 ing agency or the National Credit Union  
13 Administration Board”; and

14 (iv) by striking “with respect to  
15 banks, savings and loan institutions” and  
16 inserting “with respect to depository insti-  
17 tutions”; and

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

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

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

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

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

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

22          “(6) Notwithstanding anything in this subsection or  
23          any other provision of law, including the National Bank  
24          Act (12 U.S.C. 38 et seq.) and the Home Owners’ Loan  
25          Act (12 U.S.C. 1461 et seq.), regulations promulgated

1 under this subsection shall be considered supplemental to  
2 State laws governing unfair and deceptive acts and prac-  
3 tices and may not be construed to preempt any provision  
4 of State law that provides equal or greater protections.”.

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

## 8 **TITLE IX—MISCELLANEOUS**

### 9 **SEC. 901. AUTHORIZATIONS.**

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

13 (1) \$31,250,000 to support the employment of  
14 30 additional agents of the Federal Bureau of Inves-  
15 tigation and 2 additional dedicated prosecutors at  
16 the Department of Justice to coordinate prosecution  
17 of mortgage fraud efforts with the offices of the  
18 United States Attorneys; and

19 (2) \$750,000 to support the operations of inter-  
20 agency task forces of the Federal Bureau of Inves-  
21 tigation in the areas with the 15 highest concentra-  
22 tions of mortgage fraud.