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(Original Signature of Member)

110TH CONGRESS
1ST SESSION

H. R.

To amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to establish licensing and registration requirements for residential mortgage originators, to provide certain minimum standards for consumer mortgage loans, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

Mr. MILLER of North Carolina (for himself, Mr. WATT, and Mr. FRANK of Massachusetts) introduced the following bill; which was referred to the Committee on _____

A BILL

To amend the Truth in Lending Act to reform consumer mortgage practices and provide accountability for such practices, to establish licensing and registration requirements for residential mortgage originators, to provide certain minimum standards for consumer mortgage loans, and for other purposes.

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

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

2 (a) **SHORT TITLE.**—This Act may be cited as the
3 “Mortgage Reform and Anti-Predatory Lending Act of
4 2007”.

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

Sec. 1. Short title; table of contents.

TITLE I—MORTGAGE ORIGINATION

- Sec. 101. Definitions.
- Sec. 102. Residential mortgage loan origination.
- Sec. 103. Anti-steering.
- Sec. 104. Licensing and registration of mortgage originators.
- Sec. 105. Enforcement.
- Sec. 106. Regulations.

TITLE II—MINIMUM STANDARDS FOR MORTGAGES

- Sec. 201. Ability to repay.
- Sec. 202. Net tangible benefit for refinancing of residential mortgage loans.
- Sec. 203. Safe harbor and rebuttable presumption.
- Sec. 204. Securitizer liability.
- Sec. 205. Defense to foreclosure.
- Sec. 206. Additional standards and requirements.
- Sec. 207. Amendment to provision governing correction of errors.
- Sec. 208. Amendment relating to right of rescission.
- Sec. 209. Amendments to civil liability provisions.
- Sec. 210. Rule of construction.
- Sec. 211. Regulations.

TITLE III—HIGH-COST MORTGAGES

- Sec. 301. Definitions relating to high-cost mortgages.
- Sec. 302. Amendments to existing requirements for certain mortgages.
- Sec. 303. Additional requirements for certain mortgages.
- Sec. 304. Regulations.

7 **TITLE I—MORTGAGE**
8 **ORIGINATION**

9 **SEC. 101. DEFINITIONS.**

10 Section 103 of the Truth in Lending Act (15 U.S.C.
11 1602) is amended by adding at the end the following new
12 subsection:

1 “(cc) DEFINITIONS RELATING TO MORTGAGE ORIGI-
2 NATION.—

3 “(1) COMMISSION.—The term ‘Commission’
4 means the Federal Trade Commission.

5 “(2) MORTGAGE ORIGINATOR.—The term
6 ‘mortgage originator’—

7 “(A) means any person who, for direct or
8 indirect compensation or gain, or in the expec-
9 tation of direct or indirect compensation or
10 gain—

11 “(i) takes a residential mortgage loan
12 application;

13 “(ii) assists a consumer in obtaining
14 or applying to obtain a residential mort-
15 gage loan; or

16 “(iii) offers or negotiates terms of a
17 residential mortgage loan;

18 “(B) includes any person who represents
19 to the public, through advertising or other
20 means of communicating or providing informa-
21 tion (including the use of business cards, sta-
22 tionery, brochures, signs, rate lists, or other
23 promotional items), that such person can or will
24 provide any of the services or perform any of

1 the activities described in subparagraph (A);
2 and

3 “(C) does not include any person who is
4 not otherwise described in subparagraph (A) or
5 (B) and who performs purely administrative or
6 clerical tasks on behalf of a person who is de-
7 scribed in any such subparagraph.

8 “(3) QUALIFIED NATIONWIDE REGISTRATION
9 REGIME.—The term ‘qualified nationwide registra-
10 tion regime’ means a nationwide registry for the res-
11 idential mortgage industry, such as the registry es-
12 tablished by the Conference of State Bank Super-
13 visors and the American Association of Residential
14 Mortgage Regulators, which is—

15 “(A) certified by the Secretary as a reg-
16 istry that provides a comprehensive licensing
17 and supervisory database for mortgage origina-
18 tors; or

19 “(B) established by the Secretary under
20 section 129A(c)(3).

21 “(4) OTHER DEFINITIONS RELATING TO MORT-
22 GAGE ORIGINATOR.—For purposes of this sub-
23 section, a person ‘assists a consumer in obtaining or
24 applying to obtain a residential mortgage loan’ by,
25 among other things, advising on loan terms (includ-

1 ing rates, fees, other costs), preparing loan pack-
2 ages, or collecting information on behalf of the con-
3 sumer with regard to a residential mortgage loan.

4 “(5) QUALIFYING STATE LICENSING LAW.—The
5 term ‘qualifying State licensing law’ means the law
6 in effect in a State which the Secretary determines
7 satisfies the following minimum requirements:

8 “(A) All mortgage originators operating in
9 the State which are not depository institutions
10 or institution-affiliated parties of a depository
11 institution are required—

12 “(i) to be licensed by the State; and

13 “(ii) to meet effective minimum re-
14 quirements in order to qualify for any such
15 license.

16 “(B) All mortgage originators operating in
17 the State which are not depository institutions
18 or institution-affiliated parties of a depository
19 institution are required at all times to main-
20 tain—

21 “(i) a minimum net worth, net of in-
22 tangibles, of at least \$100,000, as deter-
23 mined in accordance with generally accept-
24 ed accounting principles; or

1 “(ii) a surety bond in the minimum
2 amount of \$100,000.

3 “(C) A State mortgage originator super-
4 visory authority is maintained to provide effec-
5 tive supervision and enforcement of such law,
6 including the suspension, termination, or non-
7 renewal of a license for a violation of State or
8 Federal law.

9 “(D) The State mortgage originator super-
10 visory authority ensures that all mortgage origi-
11 nators operating in the State which are not de-
12 pository institutions or institution-affiliated par-
13 ties of a depository institution are registered
14 under the qualified nationwide registration re-
15 gime.

16 “(E) The State mortgage originator super-
17 visory authority is required to regularly report
18 violations of such law, as well as enforcement
19 actions and other relevant information, to the
20 qualified nationwide reporting regime.

21 “(F) All mortgage originators operating in
22 the State which are not depository institutions
23 or institution-affiliated parties of a depository
24 institution are required to receive minimum
25 training and undergo a background check be-

1 fore receiving a license, and receive ongoing
2 training or continuing education as a condition
3 for maintaining and renewing the licence.

4 “(G) Any mortgage originator licensed
5 under such law is required to provide accurate
6 and effective disclosures to consumers con-
7 cerning the costs of the mortgage originator’s
8 services and the costs and benefits of residential
9 mortgage loan products, including the disclo-
10 sures required under section 129A(a).

11 “(H) Individual consumers have an effec-
12 tive mechanism to obtain redress for any viola-
13 tion of such law by a mortgage originator.

14 “(6) RESIDENTIAL MORTGAGE LOAN.—The
15 term ‘residential mortgage loan’ means any con-
16 sumer credit transaction that is secured by a mort-
17 gage or deed of trust on a dwelling or on residential
18 real property that includes a dwelling, other than a
19 consumer credit transaction under an open end cred-
20 it plan or a reverse mortgage.

21 “(7) SECRETARY.—The term ‘Secretary’, when
22 used in connection with any transaction or person
23 involved with a residential mortgage loan, means the
24 Secretary of Housing and Urban Development.

1 “(8) SECURITIZER.—The term ‘securitizer’
2 means any assignee who acquires or aggregates resi-
3 dential mortgage loans for the purpose of including
4 such loans in a pool of assets for the purpose of
5 issuing or selling instruments representing interests
6 in such pools.”.

7 **SEC. 102. RESIDENTIAL MORTGAGE LOAN ORIGINATION.**

8 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
9 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
10 after section 129 the following new section:

11 **“§ 129A. Residential mortgage loan origination**

12 “(a) DUTY OF CARE.—

13 “(1) STANDARD.—Subject to regulations pre-
14 scribed under this subsection, each mortgage origi-
15 nator shall, in addition to the duties imposed by oth-
16 erwise applicable provisions of State or Federal
17 law—

18 “(A) be qualified, licensed, and registered
19 as a mortgage originator in accordance with ap-
20 plicable State or Federal law;

21 “(B) with respect to each consumer seek-
22 ing or inquiring about a residential mortgage
23 loan, diligently work to present the consumer
24 with a range of residential mortgage loan prod-
25 ucts for which the consumer qualifies and which

1 are appropriate to the consumer's existing cir-
2 cumstances, based on information known by, or
3 provided in good faith to, the originator;

4 “(C) make full, complete, and timely dis-
5 closure to each such consumer of—

6 “(i) the comparative costs and bene-
7 fits of each residential mortgage loan prod-
8 uct offered, discussed, or referred to by the
9 originator;

10 “(ii) the nature of the originator's re-
11 lationship to the consumer (including the
12 cost of the services to be provided by the
13 originator and a statement that the mort-
14 gage originator is or is not acting as an
15 agent for the consumer, as the case may
16 be); and

17 “(iii) any relevant conflicts of interest;

18 “(D) certify to the creditor, with respect to
19 any transaction involving a residential mortgage
20 loan, that the mortgage originator has fulfilled
21 all requirements applicable to the originator
22 under this section with respect to the trans-
23 action; and

1 “(E) include the unique identifier of the
2 originator provided by a qualified nationwide
3 registration regime on all loan documents.

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

6 “(A) creating an agency or fiduciary rela-
7 tionship between a mortgage originator and a
8 consumer if the originator does not hold himself
9 or herself out as such an agent or fiduciary and
10 complies with all requirements of this title that
11 are applicable to mortgage originators; and

12 “(B) restricting a mortgage originator
13 from holding himself or herself out as an agent
14 or fiduciary of a consumer subject to any addi-
15 tional duty, requirement, or limitation applica-
16 ble to agents or fiduciaries under any Federal
17 or State law.

18 “(3) REGULATIONS.—

19 “(A) IN GENERAL.—The Secretary, the
20 Comptroller of the Currency, the Director of
21 the Office of Thrift Supervision, and the Fed-
22 eral Deposit Insurance Corporation, in con-
23 sultation with the Commission, shall jointly pre-
24 scribe regulations to—

1 “(i) further define the duty estab-
2 lished under paragraph (1);

3 “(ii) implement the requirements of
4 this subsection;

5 “(iii) establish the time period within
6 which any disclosure required under para-
7 graph (1) shall be made to the consumer;
8 and

9 “(iv) establish such other require-
10 ments for any mortgage originator as such
11 regulatory agencies may determine to be
12 appropriate to meet the purposes of this
13 subsection.

14 “(B) COMPLEMENTARY AND NONDUPLICA-
15 TIVE DISCLOSURES.—The agencies referred to
16 in subparagraph (A) shall endeavor to make the
17 required disclosures to consumers under this
18 section complementary and nonduplicative with
19 other disclosures for mortgage consumers to the
20 extent such efforts—

21 “(i) are practicable; and

22 “(ii) do not reduce the value of any
23 such disclosure to recipients of such
24 loans.”.

1 (b) CLERICAL AMENDMENT.—The table of sections
2 for chapter 2 of the Truth in Lending Act is amended
3 by inserting after the item relating to section 129 the fol-
4 lowing new item:

“129A. Residential mortgage loan origination.”.

5 **SEC. 103. ANTI-STEERING.**

6 Section 129A of the Truth in Lending Act (as added
7 by section 102(a)) is amended by inserting after sub-
8 section (a) the following new subsection:

9 “(b) PROHIBITION ON STEERING INCENTIVES.—

10 “(1) IN GENERAL.—No mortgage originator
11 may receive from any person, and no person may
12 pay to any mortgage originator, directly or indi-
13 rectly, any incentive compensation (including yield
14 spread premium) that is based on, or varies with,
15 the terms of any residential mortgage loan.

16 “(2) ANTI-STEERING REGULATIONS.—

17 “(A) REQUIRED.—The Secretary, the
18 Comptroller of the Currency, the Director of
19 the Office of Thrift Supervision, and the Fed-
20 eral Deposit Insurance Corporation, in con-
21 sultation with the Commission, shall jointly pre-
22 scribe regulations to prohibit mortgage origina-
23 tors from steering any consumer to a residential
24 mortgage loan that is not in the consumer’s in-

1 terest (such as loans with predatory character-
2 istics).

3 “(B) CONDITIONS.—In prescribing any
4 regulations under this subsection, the Sec-
5 retary, the Comptroller of the Currency, the Di-
6 rector of the Office of Thrift Supervision, and
7 the Federal Deposit Insurance Corporation, in
8 consultation with the Commission, shall seek to
9 ensure that such regulations—

10 “(i) promote the interest of the con-
11 sumer in obtaining—

12 “(I) the best terms for a residen-
13 tial mortgage loan for which the con-
14 sumer qualifies; and

15 “(II) useful information on the
16 nature of the residential mortgage
17 loan and the relationship of the con-
18 sumer with the mortgage originator;
19 and

20 “(ii) prohibit mortgage originators
21 from steering, counseling, or directing a
22 consumer into any residential mortgage
23 loan that is not in the consumer’s interest.

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

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

4 “(B) restricting a consumer’s ability to fi-
5 nance origination fees to the extent that such
6 fees were fully disclosed to the consumer earlier
7 in the application process and do not vary
8 based on the consumer’s decision about whether
9 to finance such fees.”.

10 **SEC. 104. LICENSING AND REGISTRATION OF MORTGAGE**
11 **ORIGINATORS.**

12 Section 129A of the Truth in Lending Act is amend-
13 ed by inserting after subsection (b) (as added by section
14 103) the following new subsections:

15 “(c) **FEDERAL LICENSING AND REGULATION BACK-**
16 **STOP.—**

17 “(1) **IN GENERAL.—**A mortgage originator
18 which is not a depository institution or an institu-
19 tion-affiliated party of a depository institution may
20 not originate any residential mortgage loan after the
21 end of the 24-month period beginning on the date of
22 the enactment of the Mortgage Reform and Anti-
23 Predatory Lending Act of 2007, unless such mort-
24 gage originator—

25 “(A) is licensed—

1 “(i) under a qualifying State licensing
2 law or by the Secretary in accordance with
3 paragraph (2); and

4 “(B) is registered with and participating in
5 a qualified nationwide registration regime.

6 “(2) HUD LICENSING AND REGISTRATION.—

7 “(A) ESTABLISHMENT.—If, on or after the
8 end of the 24-month period beginning on the
9 date of the enactment of the Mortgage Reform
10 and Anti-Predatory Lending Act of 2007, any
11 State does not have in effect a qualifying State
12 licensing law, the Secretary shall establish and
13 maintain a system for licensing and registering
14 mortgage originators operating in such State
15 which are not depository institutions or institu-
16 tion-affiliated parties of a depository institution.

17 “(B) REQUIREMENTS.—The Secretary
18 shall prescribe, by regulation, such require-
19 ments for mortgage originators licensed under
20 the system established under subparagraph (A)
21 as the Secretary determines to be appropriate
22 and are equivalent to the requirements for
23 qualifying State licensing laws.

24 “(C) BEST INTERESTS OF CONSUMER RE-
25 QUIREMENT.—Regulations prescribed under

1 subparagraph (B) shall require a mortgage
2 originator to act solely in the best interest of
3 the consumer, including finding the residential
4 mortgage loan that best meets the needs of the
5 borrower, and to meet any other duties incum-
6 bent on the mortgage originator under Federal
7 or State law when acting in such a capacity.

8 “(3) PARTICIPATION IN QUALIFIED NATION-
9 WIDE REGISTRATION REGIME.—If the Secretary has
10 not certified any registry as a qualified nationwide
11 registration regime by the end of the 18-month pe-
12 riod beginning on the date of the enactment of the
13 Mortgage Reform and Anti-Predatory Lending Act
14 of 2007, or if a certified nationwide registration re-
15 gime fails to meet the requirements under this title
16 for such a regime, the Secretary shall establish a
17 qualified nationwide registration regime that pro-
18 vides a comprehensive licensing and supervisory
19 database for mortgage originators to carry out the
20 purposes of this section and the effective regulation
21 of mortgage originators licensed under a qualifying
22 State licensing law or by the Secretary under para-
23 graph (2).

24 “(4) ADVANCE PREPARATION.—The Secretary
25 shall take such actions as the Secretary determines

1 to be appropriate in advance of the end of the 24-
2 month period beginning on the date of the enact-
3 ment of the Mortgage Reform and Anti-Predatory
4 Lending Act of 2007, to ensure the timely establish-
5 ment, if necessary, on or after the end of such pe-
6 riod of—

7 “(A) a system for licensing and registering
8 mortgage originators under paragraph (2); or

9 “(B) a qualified nationwide registration re-
10 gime under paragraph (3).

11 “(5) TEMPORARY EXTENSION OF PERIOD.—The
12 Secretary may extend, by not more than 6 months,
13 the 24-month period referred to in paragraphs (1)
14 and (2) for the licensing of mortgage originators in
15 any State under a qualifying State licensing law if
16 the Secretary determines that such State is making
17 a good faith effort to establish a qualifying State li-
18 censing law and to license mortgage originators
19 under such law.

20 “(6) MINIMUM STANDARDS FOR CERTIFICATION
21 OF A NATIONWIDE REGISTRATION REGIME.—In de-
22 termining whether to certify a nationwide registra-
23 tion regime, the Secretary shall determine that the
24 regime at a minimum—

1 “(A) provides and maintains a unique
2 identifier for each mortgage originator partici-
3 pating in the regime; and

4 “(B) provides relevant and timely informa-
5 tion to consumers, industry participants, and
6 Federal and State regulatory agencies (includ-
7 ing any enforcement actions relating to any
8 mortgage originator).

9 “(d) REGULATION OF DEPOSITORY INSTITUTIONS.—

10 “(1) IN GENERAL.—Any depository institution,
11 and any institution-affiliated party of a depository
12 institution, that is a mortgage originator shall com-
13 ply with regulations prescribed under paragraph (2)
14 and applicable requirements for registrants of a
15 qualified nationwide registration regime.

16 “(2) REGULATIONS.—The Comptroller of the
17 Currency, the Director of the Office of Thrift Super-
18 vision, and the Federal Deposit Insurance Corpora-
19 tion, in consultation with the Secretary, shall jointly
20 prescribe equivalent regulations applicable to deposi-
21 tory institutions, and institution-affiliated parties of
22 depository institutions that act as mortgage origina-
23 tors, taking into account all the requirements for a
24 qualifying State licensing law, and shall specifically
25 require—

1 “(A) licensing of any institution-affiliated
2 party of a depository institution who acts as a
3 mortgage originator;

4 “(B) registration with, and participation
5 in, a qualified nationwide registration regime;
6 and

7 “(C) minimum qualification requirements
8 and pre-licensing training and continuing edu-
9 cation requirements.

10 “(3) DEFINITIONS.—For purposes of this sub-
11 section, the term ‘depository institution’ includes a
12 credit union and the term ‘institution-affiliated
13 party’ has the same meaning as in section 3(u) of
14 the Federal Deposit Insurance Act.”.

15 **SEC. 105. ENFORCEMENT.**

16 Section 129A of the Truth in Lending Act is amend-
17 ed by inserting after subsection (d) (as added by section
18 104) the following new subsection:

19 “(e) LIABILITY FOR VIOLATIONS.—

20 “(1) IN GENERAL.—For purposes of providing
21 a cause of action for any failure by a mortgage origi-
22 nator to comply with any requirement imposed
23 under this section and any regulation prescribed
24 under this section, subsections (a) and (b) of section
25 130 shall be applied with respect to any such failure

1 by substituting ‘mortgage originator’ for ‘creditor’
2 each place such term appears in each such sub-
3 section

4 “(2) MAXIMUM.—The maximum amount of any
5 liability of a mortgage originator under paragraph
6 (1) to a consumer for any violation of this section
7 shall not exceed an amount equal to 3 times the
8 total amount of direct and indirect compensation or
9 gain accruing to the mortgage originator in connec-
10 tion with the residential mortgage loan involved in
11 the violation, plus the costs to the consumer of the
12 action, including a reasonable attorney’s fee.”.

13 **SEC. 106. REGULATIONS.**

14 Except as otherwise provided in the amendment made
15 by section 104, regulations required or authorized to be
16 prescribed under this title or the amendments made by
17 this title—

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

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

1 **TITLE II—MINIMUM STANDARDS**
2 **FOR MORTGAGES**

3 **SEC. 201. ABILITY TO REPAY.**

4 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
5 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
6 after section 129A (as added by section 102(a)) the fol-
7 lowing new section:

8 **“§ 129B. Minimum standards for residential mortgage**
9 **loans**

10 “(a) ABILITY TO REPAY.—

11 “(1) IN GENERAL.—In accordance with regula-
12 tions prescribed jointly by the Comptroller of the
13 Currency, the Director of the Office of Thrift Super-
14 vision and the Federal Deposit Insurance Corpora-
15 tion, in consultation with the Commission, no cred-
16 itor may make a residential mortgage loan unless
17 the creditor makes a reasonable and good faith de-
18 termination based on verified and documented infor-
19 mation that, at the time the loan is consummated,
20 the consumer has a reasonable ability to repay the
21 loan, according to its terms, and all applicable taxes,
22 insurance, and assessments.

23 “(2) MULTIPLE LOANS.—If the creditor knows,
24 or has reason to know, that 1 or more residential
25 mortgage loans secured by the same dwelling will be

1 made to the same consumer, the creditor shall make
2 a reasonable and good faith determination, based on
3 verified and documented information, that the con-
4 sumer has a reasonable ability to repay the com-
5 bined payments of all loans on the same dwelling ac-
6 cording to the terms of those loans and all applicable
7 taxes, insurance, and assessments.

8 “(3) BASIS FOR DETERMINATION.—A deter-
9 mination under this subsection of a consumer’s abil-
10 ity to repay a residential mortgage loan shall be
11 based on consideration of the consumer’s credit his-
12 tory, current income, expected income the consumer
13 is reasonably assured of receiving, current obliga-
14 tions, debt-to-income ratio, employment status, and
15 other financial resources other than the consumer’s
16 equity in the real property that secures repayment
17 of the loan.

18 “(4) NONSTANDARD LOANS.—

19 “(A) ADJUSTABLE RATE LOANS THAT
20 DEFER REPAYMENT OF ANY PRINCIPAL OR IN-
21 TEREST.—For purposes of determining, under
22 this subsection, a consumer’s ability to repay an
23 adjustable rate residential mortgage loan that
24 defers the repayment of any principal or inter-

1 est, the creditor shall take into consideration a
2 fully amortizing repayment schedule.

3 “(B) INTEREST-ONLY LOANS.—For pur-
4 poses of determining, under this subsection, a
5 consumer’s ability to repay a residential mort-
6 gage loan that requires the payment of interest
7 only, the creditor shall take into consideration
8 the payment amount required to amortize the
9 loan by its final maturity.

10 “(C) CALCULATION FOR NEGATIVE AMOR-
11 TIZATION.—In making any determination under
12 this subsection, a creditor shall also take into
13 consideration any balance increase that may ac-
14 crue from any negative amortization provision.

15 “(D) CALCULATION PROCESS.—For pur-
16 poses of making any determination under this
17 subsection, a creditor shall calculate the month-
18 ly payment amount for principal and interest on
19 any residential mortgage loan by assuming—

20 “(i) the loan proceeds are fully dis-
21 bursed on the date of the consummation of
22 the loan;

23 “(ii) the loan is to be repaid in sub-
24 stantially equal monthly amortizing pay-
25 ments for principal and interest over the

1 entire term of the loan with no balloon
2 payment, unless the loan contract requires
3 more rapid repayment (including balloon
4 payment), in which case the contract's re-
5 payment schedule shall be used in this cal-
6 culation; and

7 “(iii) the interest rate over the entire
8 term of the loan is a fixed rate equal to the
9 fully indexed rate at the time of the loan
10 closing, without considering the introduc-
11 tory rate.

12 “(5) FULLY-INDEXED RATE DEFINED.—For
13 purposes of this subsection, the term ‘fully indexed
14 rate’ means the index rate prevailing on a residential
15 mortgage loan at the time the loan is made plus the
16 margin that will apply after the expiration of an in-
17 troduutory interest rate.”.

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

“129B. Minimum standards for all mortgages.”.

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

3 Section 129B of the Truth in Lending Act (as added
4 by section 201(a)) is amended by inserting after sub-
5 section (a) the following new subsection:

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

8 “(1) IN GENERAL.—No creditor may extend
9 credit in connection with any residential mortgage
10 loan that involves a refinancing of a prior existing
11 residential mortgage loan unless the creditor reason-
12 ably and in good faith determines, at the time the
13 loan is consummated and on the basis of information
14 known by or provided in good faith to the creditor,
15 that the refinanced loan will provide a net tangible
16 benefit to the consumer.

17 “(2) CERTAIN LOANS PROVIDING NO NET TAN-
18 GIBLE BENEFIT.—A residential mortgage loan that
19 involves a refinancing of a prior existing residential
20 mortgage loan shall not be considered to provide a
21 net tangible benefit to the consumer if the costs of
22 the refinanced loan, including points, fees and other
23 charges, exceed the amount of any newly advanced
24 principal.

25 “(3) NET TANGIBLE BENEFIT.—The Comp-
26 troller of the Currency, the Director of the Office of

1 Thrift Supervision and the Federal Deposit Insur-
2 ance Corporation shall jointly prescribe regulations
3 defining the term ‘net tangible benefit’ for purposes
4 of this subsection.”.

5 **SEC. 203. SAFE HARBOR AND REBUTTABLE PRESUMPTION.**

6 Section 129B of the Truth in Lending Act is amend-
7 ed by inserting after subsection (b) (as added by section
8 202) the following new subsection:

9 “(c) PRESUMPTION OF ABILITY TO REPAY AND NET
10 TANGIBLE BENEFIT.—

11 “(1) IN GENERAL.—Any creditor with respect
12 to any residential mortgage loan, and any assignee
13 of such loan, may presume that the loan has met the
14 requirements of subsections (a) and (b), if the loan
15 is a qualified mortgage or a qualified safe harbor
16 mortgage.

17 “(2) REBUTTABLE PRESUMPTION.—Any pre-
18 sumption established under paragraph (1) with re-
19 spect to any residential mortgage loan shall be re-
20 buttable only—

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

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

24 “(3) DEFINITIONS.—For purposes of this sec-
25 tion the following definitions shall apply:

1 “(A) MOST RECENT CONVENTIONAL MORT-
2 GAGE RATE.—The term ‘most recent conven-
3 tional mortgage rate’ means the contract inter-
4 est rate on commitments for fixed-rate first
5 mortgages most recently published in the Fed-
6 eral Reserve Statistical Release on selected in-
7 terest rates (daily or weekly), and commonly re-
8 ferred to as the H.15 release, in the week pre-
9 ceding a date of determination for purposes of
10 applying this subsection.

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

13 “(i) a residential mortgage loan
14 that—

15 “(I) constitutes a first lien on the
16 real property securing the loan;

17 “(II) has an annual percentage
18 rate that does not equal or exceed the
19 yield on securities issued by the Sec-
20 retary of the Treasury under chapter
21 31 of title 31, United States Code,
22 that bear comparable periods of matu-
23 rity by more than 3 percentage points;
24 and

1 “(III) has an annual percentage
2 rate that does not equal or exceed the
3 most recent conventional mortgage
4 rate, or such other annual percentage
5 rate as may be established by regula-
6 tion under paragraph (6), by more
7 than 175 basis points; or

8 “(ii) a residential mortgage loan
9 that—

10 “(I) is not the first lien on the
11 real property securing the loan;

12 “(II) has an annual percentage
13 rate that does not equal or exceed the
14 yield on securities issued by the Sec-
15 retary of the Treasury under chapter
16 31 of title 31, United States Code,
17 that bear comparable periods of matu-
18 rity by more than 5 percentage points;
19 and

20 “(III) has an annual percentage
21 rate that does not equal or exceed the
22 most recent conventional mortgage
23 rate, or such other annual percentage
24 rate as may be established by regula-

1 tion under paragraph (6), by more
2 than 375 basis points.

3 “(C) QUALIFIED SAFE HARBOR MORT-
4 GAGE.—The term ‘qualified safe harbor mort-
5 gage’ means a residential mortgage loan—

6 “(i) for which the income and finan-
7 cial resources of the consumer are verified
8 and documented;

9 “(ii) for which the residential mort-
10 gage loan underwriting process is based on
11 the fully-indexed rate, and takes into ac-
12 count real estate taxes and homeowner’s
13 and mortgage insurance premiums;

14 “(iii) which does not cause the con-
15 sumer’s total monthly debts, including
16 amounts under the loan, to exceed 50 per-
17 cent of his or her monthly gross income or
18 such other maximum percentage of such
19 income as may be prescribed by regulation
20 under paragraph (4);

21 “(iv) which does not provide for a re-
22 payment schedule that results in negative
23 amortization at any time;

24 “(v) meets such other requirements as
25 may be established by regulation; and

1 “(vi) for which any of the following
2 factors apply with respect to such loan:

3 “(I) The periodic payment
4 amount for principal or interest are
5 fixed for a minimum of 7 years under
6 the terms of the loan.

7 “(II) In the case of an adjustable
8 rate loan, the annual percentage rate
9 varies based on a margin that is less
10 than 3 percent over a single generally
11 accepted interest rate index that is
12 the basis for determining the rate of
13 interest for the mortgage.

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

16 “(A) IN GENERAL.—Without regard to
17 whether a residential mortgage loan is subject
18 to or reportable under the Home Mortgage Dis-
19 closure Act of 1975 and subject to subpara-
20 graph (B), the difference between the annual
21 percentage rate of such loan and the yield on
22 securities issued by the Secretary of the Treas-
23 ury under chapter 31 of title 31, United States
24 Code, having comparable periods of maturity
25 shall be determined using the same procedures

1 and methods of calculation applicable to loans
2 that are subject to the reporting requirements
3 under the Home Mortgage Disclosure Act of
4 1975.

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

13 “(5) APR IN CASE OF INTRODUCTORY
14 OFFER.—For purposes of making a determination of
15 whether a residential mortgage loan that provides
16 for a fixed interest rate for an introductory period
17 and then resets or adjusts to an adjustable rate is
18 a qualified mortgage, the determination of the an-
19 nual percentage rate shall be based on the greater
20 of the introductory rate and the fully indexed rate
21 of interest.

22 “(6) REGULATIONS.—

23 “(A) IN GENERAL.—The Comptroller of
24 the Currency, the Director of the Office of
25 Thrift Supervision, and the Federal Deposit In-

1 surance Corporation shall jointly prescribe reg-
2 ulations to carry out the purposes of this sub-
3 section.

4 “(B) CLASSIFICATIONS, DIFFERENTIA-
5 TIONS, MODIFICATIONS, AND EXEMPTIONS.—
6 The regulations prescribed under subparagraph
7 (A) may contain such classifications, differen-
8 tiations, modifications of terms defined in this
9 subsection, or other provisions, and may provide
10 for such adjustments and exceptions, as in the
11 judgement of the Federal banking agencies re-
12 ferred to in subparagraph (A) are necessary
13 and appropriate to effectuate the purposes of
14 this subsection to prevent circumvention or eva-
15 sion thereof, or to facilitate compliance there-
16 with.”.

17 **SEC. 204. SECURITIZER LIABILITY.**

18 Section 129B of the Truth in Lending Act is amend-
19 ed by inserting after subsection (c) (as added by section
20 203) the following new subsection:

21 “(d) LIABILITY FOR VIOLATIONS.—

22 “(1) LIMITED ASSIGNEE LIABILITY.—Notwith-
23 standing sections 125(e) and 131 and except as pro-
24 vided in paragraph (2), a civil action which may be
25 maintained against a creditor with respect to a resi-

1 dential mortgage loan for a violation of subsection
2 (a) or (b) may be maintained against an assignee,
3 including a securitizer, of such residential mortgage
4 loan, acting in good faith, for the following liabilities
5 only:

6 “(A) Rescission of the loan in accordance
7 with this title.

8 “(B) Such additional costs as the obligor
9 may have incurred as a result of the violation
10 and in connection with obtaining a rescission of
11 the loan, including a reasonable attorney’s fee.

12 “(2) EXEMPTION.—No assignee, including a
13 securitizer, of a residential mortgage loan shall be
14 liable under paragraph (1) with respect to such loan
15 if—

16 “(A) no later than 90 days after the re-
17 ceipt of notification from the consumer that the
18 loan violates subsection (a) or (b), the assignee
19 provides a cure so that the loan satisfies the re-
20 quirements of subsections (a) and (b); or

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

23 “(i) The assignee—

24 “(I) has a policy against buying
25 residential mortgage loans other than

1 qualified mortgages or qualified safe
2 harbor mortgages (as defined in sub-
3 section (c)); and

4 “(II) exercises reasonable due
5 diligence to adhere to such policy in
6 purchasing residential mortgage loans
7 through adequate, thorough, and con-
8 sistentlly applied sampling procedures
9 established in accordance with regu-
10 lations which the Comptroller of the
11 Currency, the Director of the Office of
12 Thrift Supervision, and the Federal
13 Deposit Insurance Corporation shall
14 jointly prescribe.

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

20 “(I) will not sell or assign any
21 residential mortgage loan which is not
22 a qualified mortgage or a qualified
23 safe harbor mortgage; or

1 “(II) is a beneficiary of a rep-
2 resentation and warranty from a pre-
3 vious seller or assignor to that effect,
4 and the assignee in good faith takes rea-
5 sonable steps to obtain the benefit of such
6 representation or warranty.

7 “(3) CURE DEFINED.—For purposes of para-
8 graph (2)(A), the term ‘cure’ means, with respect to
9 a residential mortgage loan that violates subsection
10 (a) or (b), the modification or refinancing, at no cost
11 to the consumer, of the loan to provide terms that
12 would have satisfied the requirements of subsection
13 (a) and (b) if the loan had contained such terms as
14 of the origination of the loan.

15 “(4) NO CLASS ACTIONS UNDER THIS SUB-
16 SECTION.—Only individual actions may be brought
17 against an assignee, including a securitizer, of a res-
18 idential mortgage loan for a violation of subsection
19 (a) or (b).

20 “(5) SCOPE OF APPLICATION.—Liability of an
21 assignee, including a securitizer, under this sub-
22 section shall apply—

23 “(A) in any original action brought by a
24 consumer for a violation of subsection (a) or (b)
25 with respect to a residential mortgage loan dur-

1 ing the 6-year period beginning when the loan
2 is entered into; and

3 “(B) without regard to the 6-year limita-
4 tion in subparagraph (A) if raised by the con-
5 sumer at any time during the term of the
6 loan—

7 “(i) as a defense, claim, or counter-
8 claim, including a claim for a violation of
9 subsection (a) or (b), with respect to a res-
10 idential mortgage loan after foreclosure
11 has commenced on the loan, the obligation
12 to pay the balance due on the loan is accel-
13 erated, or the obligor has been in default
14 on any payment for 60 days or more; or

15 “(ii) in any action to enjoin fore-
16 closure or to preserve or obtain possession
17 of the residence securing a residential
18 mortgage loan.

19 “(6) POOLS AND INVESTORS IN POOLS EX-
20 CLUDED.—In the case of residential mortgage loans
21 acquired or aggregated for the purpose of including
22 such loans in a pool of assets for the purpose of
23 issuing or selling instruments representing interests
24 in such pools, the terms ‘assignee’ and ‘securitizer’,
25 as used in this section, do not include the pools of

1 such loans or any original or subsequent purchaser
2 of any instrument representing an interest in such
3 pool.”.

4 **SEC. 205. DEFENSE TO FORECLOSURE.**

5 Section 129B of the Truth in Lending Act is amend-
6 ed by inserting after subsection (d) (as added by section
7 204) the following new subsection:

8 “(e) DEFENSE TO FORECLOSURE.—Notwithstanding
9 any other provision of law—

10 “(1) when the holder of a residential mortgage
11 loan or anyone acting for such holder initiates a ju-
12 dicial or non-judicial foreclosure, a consumer who
13 has the right to rescind under this section with re-
14 spect to such loan may exercise such right; and

15 “(2) a third party may sell, transfer, convey, or
16 assign a residential mortgage loan to an assignee,
17 including a securitizer, to effect a rescission or a
18 cure.”.

19 **SEC. 206. ADDITIONAL STANDARDS AND REQUIREMENTS.**

20 (a) IN GENERAL.—Section 129B of the Truth in
21 Lending Act is amended by inserting after subsection (e)
22 (as added by section 205) the following new subsections:

23 “(f) PROHIBITION ON CERTAIN PREPAYMENT PEN-
24 ALTIES.—

1 “(1) PROHIBITED ON CERTAIN LOANS.—A resi-
2 dential mortgage loan that is not a qualified mort-
3 gage (as defined in subsection (c)) may not contain
4 terms under which a consumer must pay a prepay-
5 ment penalty for paying all or part of the principal
6 after the loan is consummated.

7 “(2) PROHIBITED AFTER INITIAL PERIOD ON
8 LOANS WITH A RESET.—A residential mortgage loan
9 with a fixed interest rate for an introductory period
10 that adjusts or resets to a variable interest rate
11 after such period may not contain terms under
12 which a consumer must pay a prepayment penalty
13 for paying all or part of the principal after the be-
14 ginning of the 3-month period ending on the date of
15 the adjustment or reset.

16 “(g) SINGLE PREMIUM CREDIT INSURANCE PROHIB-
17 ITED.—No creditor may finance, directly or indirectly, in
18 connection with any residential mortgage loan or with any
19 extension of credit under an open end consumer credit
20 plan secured by the principal dwelling of the consumer
21 (other than a reverse mortgage), any credit life, credit dis-
22 ability, credit unemployment or credit property insurance,
23 or any other accident, loss-of-income, life or health insur-
24 ance, or any payments directly or indirectly for any debt
25 cancellation or suspension agreement or contract, except

1 that insurance premiums or debt cancellation or suspen-
2 sion fees calculated and paid in full on a monthly basis
3 shall not be considered financed by the creditor.

4 “(h) ARBITRATION.—

5 “(1) IN GENERAL.—No residential mortgage
6 loan and no extension of credit under an open end
7 consumer credit plan secured by the principal dwell-
8 ing of the consumer (other than a reverse mortgage)
9 may include terms which require arbitration or any
10 other nonjudicial procedure as the method for resolv-
11 ing any controversy or settling any claims arising
12 out of the transaction.

13 “(2) POST-CONTROVERSY AGREEMENTS.—Sub-
14 ject to paragraph (3), paragraph (1) shall not be
15 construed as limiting the right of the consumer and
16 the creditor or an assignee, including a securitizer,
17 to agree to arbitration or any other nonjudicial pro-
18 cedure as the method for resolving any controversy
19 at any time after a dispute or claim under the trans-
20 action arises.

21 “(3) NO WAIVER OF STATUTORY CAUSE OF AC-
22 TION.—No provision of any residential mortgage
23 loan or of any extension of credit under an open end
24 consumer credit plan secured by the principal dwell-
25 ing of the consumer (other than a reverse mort-

1 gage), and no other agreement between the con-
2 sumer and the creditor, shall be applied or inter-
3 preted so as to bar a consumer from bringing an ac-
4 tion in an appropriate district court of the United
5 States, or any other court of competent jurisdiction,
6 pursuant to section 130 or any other provision of
7 law, for damages or other relief in connection with
8 any alleged violation of this section, any other provi-
9 sion of this title, or any other Federal law.

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

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

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

19 “(j) EFFECT OF FORECLOSURE ON PREEXISTING
20 LEASE.—In the case of any foreclosure on any residential
21 real property securing an extension of credit made under
22 a contract entered into after the date of the enactment
23 of the Mortgage Reform and Anti-Predatory Lending Act
24 of 2007, any successor in interest in such property pursu-

1 ant to the foreclosure shall assume such interest subject
2 to—

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

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

11 “(k) MORTGAGES WITH NEGATIVE AMORTIZA-
12 TION.—No creditor may extend credit to a first-time bor-
13 rower in connection with a consumer credit transaction
14 under an open or closed end consumer credit plan secured
15 by a dwelling or residential real property that includes a
16 dwelling, other than a reverse mortgage, that provides or
17 permits a payment plan that may, at any time over the
18 term of the extension of credit, result in negative amorti-
19 zation unless, before such transaction is consummated—

20 “(1) the creditor provides the consumer with a
21 statement that—

22 “(A) the pending transaction will or may,
23 as the case may be, result in negative amortiza-
24 tion;

1 “(B) describes negative amortization in
2 such manner as the Federal banking agencies
3 shall prescribe;

4 “(C) negative amortization increases the
5 outstanding principal balance of the account;
6 and

7 “(D) negative amortization reduces the
8 consumer’s equity in the real property; and

9 “(2) the consumer provides the creditor with
10 sufficient documentation to demonstrate that the
11 consumer received homeownership counseling from
12 organizations or counselors certified by the Sec-
13 retary of Housing and Urban Development as com-
14 petent to provide such counseling.”.

15 (b) CONFORMING AMENDMENT RELATING TO EN-
16 FORCEMENT .—Section 108(a) of the Truth in Lending
17 Act (15 U.S.C. 1607(a)) is amended by inserting after
18 paragraph (6) the following new paragraph:

19 “(7) sections 21B and 21C of the Securities
20 Exchange Act of 1934, in the case of an entity that
21 is subject to consolidated supervision by the Securi-
22 ties and Exchange Commission, other than a deposi-
23 tory institution, by the Securities and Exchange
24 Commission.”.

1 **SEC. 207. AMENDMENT TO PROVISION GOVERNING COR-**
2 **RECTION OF ERRORS.**

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

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

9 “(1) within 30 days of the loan closing and
10 prior to the institution of any action, the consumer
11 is notified of or discovers the violation, appropriate
12 restitution is made, and whatever adjustments are
13 necessary are made to the loan to either, at the
14 choice of the consumer—

15 “(A) make the loan satisfy the require-
16 ments of this chapter; or

17 “(B) change the terms of the loan in a
18 manner beneficial to the consumer so that the
19 loan will no longer be a high-cost mortgage; or

20 “(2) within 60 days of the creditor’s discovery
21 or receipt of notification of an unintentional viola-
22 tion or bona fide error as described in subsection (c)
23 and prior to the institution of any action, the con-
24 sumer is notified of the compliance failure, appro-
25 priate restitution is made, and whatever adjustments

1 are necessary are made to the loan to either, at the
2 choice of the consumer—

3 “(A) make the loan satisfy the require-
4 ments of this chapter; or

5 “(B) change the terms of the loan in a
6 manner beneficial so that the loan will no
7 longer be a high-cost mortgage.”.

8 **SEC. 208. AMENDMENT RELATING TO RIGHT OF RESCIS-**
9 **SION.**

10 Section 130(e) of the Truth in Lending Act (15
11 U.S.C. 1640(e)) is amended by inserting after the second
12 sentence the following new sentence: “This subsection also
13 shall not bar a person from asserting a right to rescission
14 under section 125, in an action to collect the debt or as
15 a defense to a judicial or nonjudicial foreclosure after the
16 expiration of the time periods for affirmative actions set
17 forth in this section and section 125.”.

18 **SEC. 209. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.**

19 (a) INCREASE IN AMOUNT OF CIVIL MONEY PEN-
20 ALTIES FOR CERTAIN VIOLATIONS.—Section 130(a) of
21 the Truth in Lending Act (15 U.S.C. 1640(a)) is amend-
22 ed, in the matter preceding paragraph (1), by striking “an
23 amount equal to the sum” and inserting “an amount equal
24 to twice the sum”.

1 (b) STATUTE OF LIMITATIONS EXTENDED FOR SEC-
2 TION 129 VIOLATIONS.—Section 130(e) of the Truth in
3 Lending Act (15 U.S.C. 1640(e)) (as amended by section
4 207 of this title) is amended—

5 (1) in the first sentence, by striking “Any ac-
6 tion” and inserting “Except as provided in the sub-
7 sequent sentence, any action”; and

8 (2) by inserting after the first sentence the fol-
9 lowing new sentence: “Any action under this section
10 with respect to any violation of section 129 may be
11 brought in any United States district court, or in
12 any other court of competent jurisdiction, before the
13 end of the 3-year period beginning on the date of the
14 occurrence of the violation.”.

15 **SEC. 210. RULE OF CONSTRUCTION.**

16 Except as otherwise expressly provided in section
17 129A or 129B of the Truth in Lending Act (as added by
18 this Act), no provision of such section 129A or 129B shall
19 be construed as superseding, repealing, or affecting any
20 duty, right, obligation, privilege, or remedy of any person
21 under any other provision of the Truth in Lending Act.

22 **SEC. 211. REGULATIONS.**

23 Regulations required or authorized to be prescribed
24 under this title or the amendments made by this title—

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

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

6 **TITLE III—HIGH-COST**
7 **MORTGAGES**

8 **SEC. 301. DEFINITIONS RELATING TO HIGH-COST MORT-**
9 **GAGES.**

10 (a) HIGH-COST MORTGAGE DEFINED.—Section
11 103(aa) of the Truth in Lending Act (15 U.S.C.
12 1602(aa)) is amended by striking all that precedes para-
13 graph (2) and inserting the following:

14 “(aa) HIGH-COST MORTGAGE.—

15 “(1) DEFINITION.—

16 “(A) IN GENERAL.—The term ‘high-cost
17 mortgage’, and a mortgage referred to in this
18 subsection, means a consumer credit trans-
19 action that is secured by the consumer’s prin-
20 cipal dwelling, other than a reverse mortgage
21 transaction, if—

22 “(i) in the case of a loan secured—

23 “(I) by a first mortgage on the
24 consumer’s principal dwelling, the an-
25 nual percentage rate at consummation

1 of the transaction will exceed by more
2 than 8 percentage points the yield on
3 Treasury securities having comparable
4 periods of maturity on the 15th day of
5 the month immediately preceding the
6 month in which the application for the
7 extension of credit is received by the
8 creditor; or

9 “(II) by a subordinate or junior
10 mortgage on the consumer’s principal
11 dwelling, the annual percentage rate
12 at consummation of the transaction
13 will exceed by more than 10 percent-
14 age points the yield on Treasury secu-
15 rities having comparable periods of
16 maturity on the 15th day of the
17 month immediately preceding the
18 month in which the application for the
19 extension of credit is received by the
20 creditor;

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

23 “(I) in the case of a loan for
24 \$20,000 or more, 5 percent of the
25 total loan amount; or

1 “(II) in the case of a loan for
2 less than \$20,000, the lesser of 8 per-
3 cent of the total loan amount or
4 \$1,000; or

5 “(iii) the loan documents permit the
6 creditor to charge or collect prepayment
7 fees or penalties more than 30 months
8 after the loan closing or such fees or pen-
9 alties exceed, in the aggregate, more than
10 2 percent of the amount prepaid.

11 “(B) INTRODUCTORY RATES TAKEN INTO
12 ACCOUNT.—For purposes of subparagraph
13 (A)(i), the annual percentage rate of interest
14 shall be determined based on the following in-
15 terest rate:

16 “(i) In the case of a fixed-rate loan in
17 which the annual percentage rate will not
18 vary during the term of the loan, the inter-
19 est rate in effect on the date of consumma-
20 tion of the transaction.

21 “(ii) In the case of a loan in which
22 the rate of interest varies solely in accord-
23 ance with an index, the interest rate deter-
24 mined by adding the index rate in effect on
25 the date of consummation of the trans-

1 action to the maximum margin permitted
2 at any time during the loan agreement.

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

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

13 “(B) An increase or decrease under sub-
14 paragraph (A)—

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

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

25 (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 subparagraph (B) and in-
5 serting the following:

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

11 (B) in subparagraph (C)(ii), by striking
12 “and” after the semicolon at the end;

13 (C) by redesignating subparagraph (D) as
14 subparagraph (G); and

15 (D) by inserting after subparagraph (C)
16 the following new subparagraphs:

17 “(D) premiums or other charges payable at
18 or before closing for any credit life, credit dis-
19 ability, credit unemployment, or credit property
20 insurance, or any other accident, loss-of-income,
21 life or health insurance, or any payments di-
22 rectly or indirectly for any debt cancellation or
23 suspension agreement or contract, except that
24 insurance premiums or debt cancellation or sus-
25 pension fees calculated and paid in full on a

1 monthly basis shall not be considered financed
2 by the creditor;

3 “(E) except as provided in subsection (cc),
4 the maximum prepayment fees and penalties
5 which may be charged or collected under the
6 terms of the loan documents;

7 “(F) all prepayment fees or penalties that
8 are incurred by the consumer if the loan refi-
9 nances a previous loan made or currently held
10 by the same creditor or an affiliate of the cred-
11 itor; and”.

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

15 (A) by redesignating paragraph (5) as
16 paragraph (6); and

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

19 “(5) CALCULATION OF POINTS AND FEES FOR
20 OPEN-END LOANS.—In the case of open-end loans,
21 points and fees shall be calculated, for purposes of
22 this section and section 129, by adding the total
23 points and fees known at or before closing, including
24 the maximum prepayment penalties which may be
25 charged or collected under the terms of the loan doc-

1 uments, plus the minimum additional fees the con-
2 sumer would be required to pay to draw down an
3 amount equal to the total 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 new sentence: “Any person who originates or
8 brokers 2 or more mortgages referred to in subsection (aa)
9 in any 12-month period, any person who originates 1 or
10 more such mortgages through a mortgage broker in any
11 12-month period, or, in connection with a table funding
12 transaction of such a mortgage, and any person to whom
13 the obligation is initially assigned at or after settlement
14 shall be considered to be a creditor for purposes of this
15 title.”.

16 (e) BONA FIDE DISCOUNT LOAN DISCOUNT POINTS
17 AND PREPAYMENT PENALTIES.—Section 103 of the
18 Truth in Lending Act (15 U.S.C. 1602) is amended by
19 adding at the end the following new subsection:

20 “(cc) BONA FIDE DISCOUNT POINTS AND PREPAY-
21 MENT PENALTIES.—For the purposes of determining the
22 amount of points and fees for purposes of subsection (aa),
23 either the amounts described in paragraphs (1) or (4) of
24 the following paragraphs, but not both, may be excluded:

1 “(1) EXCLUSION OF BONA FIDE DISCOUNT
2 POINTS.—The discount points described in 1 of the
3 following subparagraphs shall be excluded from de-
4 termining the amounts of points and fees with re-
5 spect to a high-cost mortgage for purposes of sub-
6 section (aa):

7 “(A) Up to and including 2 bona fide dis-
8 count points payable by the consumer in con-
9 nection with the mortgage, but only if the inter-
10 est rate from which the mortgage’s interest rate
11 will be discounted does not exceed by more than
12 1 percentage point the required net yield for a
13 90-day standard mandatory delivery commit-
14 ment for a reasonably comparable loan from ei-
15 ther the Federal National Mortgage Association
16 or the Federal Home Loan Mortgage Corpora-
17 tion, whichever is greater.

18 “(B) Unless 2 bona fide discount points
19 have been excluded under subparagraph (A), up
20 to and including 1 bona fide discount points
21 payable by the consumer in connection with the
22 mortgage, but only if the interest rate from
23 which the mortgage’s interest rate will be dis-
24 counted does not exceed by more than 2 per-
25 centage points the required net yield for a 90-

1 day standard mandatory delivery commitment
2 for a reasonably comparable loan from either
3 the Federal National Mortgage Association or
4 the Federal Home Loan Mortgage Corporation,
5 whichever is greater.

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

12 “(3) EXCEPTION FOR INTEREST RATE REDUC-
13 TIONS INCONSISTENT WITH INDUSTRY NORMS.—
14 Paragraph (1) shall not apply to discount points
15 used to purchase an interest rate reduction unless
16 the amount of the interest rate reduction purchased
17 is reasonably consistent with established industry
18 norms and practices for secondary mortgage market
19 transactions.

20 “(4) ALLOWANCE OF CONVENTIONAL PREPAY-
21 MENT PENALTY.—Subsection (aa)(1)(4)(E) shall not
22 apply so as to include a prepayment penalty or fee
23 that is authorized by law other than this title and
24 may be imposed pursuant to the terms of a high-cost

1 mortgage (or other consumer credit transaction se-
2 cured by the consumer's principal dwelling) if—

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

7 “(i) in the case of a first mortgage on
8 the consumer's principal dwelling, does not
9 exceed by more than 2 percentage points
10 the yield on Treasury securities having
11 comparable periods of maturity on the
12 15th day of the month immediately pre-
13 ceding the month in which the application
14 for the extension of credit is received by
15 the creditor; or

16 “(ii) in the case of a subordinate or
17 junior mortgage on the consumer's prin-
18 cipal dwelling, does not exceed by more
19 than 4 percentage points the yield on such
20 Treasury securities; and

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

1 **SEC. 302. AMENDMENTS TO EXISTING REQUIREMENTS FOR**
2 **CERTAIN MORTGAGES.**

3 (a) PREPAYMENT PENALTY PROVISIONS.—Section
4 129(e)(2) of the Truth in Lending Act (15 U.S.C.
5 1639(e)(2)) is amended—

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

8 (2) by redesignating subparagraph (D) as sub-
9 paragraph (E); and

10 (3) by inserting after subparagraph (C) the fol-
11 lowing new subparagraph:

12 “(D) the amount of the principal obliga-
13 tion of the mortgage exceeds the maximum
14 principal obligation limitation (for the applica-
15 ble size residence) under section 203(b)(2) of
16 the National Housing Act for the area in which
17 the residence subject to the mortgage is located;
18 and”.

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

22 “(e) NO BALLOON PAYMENTS.—No high-cost mort-
23 gage may contain a scheduled payment that is more than
24 twice as large as the average of earlier scheduled pay-
25 ments. This subsection shall not apply when the payment

1 schedule is adjusted to the seasonal or irregular income
2 of the consumer.”.

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

6 (1) by striking “PAYMENT ABILITY OF CON-
7 SUMER.—A creditor shall not” and inserting “PAY-
8 MENT ABILITY OF CONSUMER.—

9 “(1) PATTERN OR PRACTICE.—

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

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

14 “(B) PRESUMPTION OF VIOLATION.—

15 There shall be a presumption that a creditor
16 has violated this subsection if the creditor en-
17 gages in a pattern or practice of making high-
18 cost mortgages without verifying or docu-
19 menting the repayment ability of consumers
20 with respect to such loans.”; and

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

23 “(2) PROHIBITION ON EXTENDING CREDIT
24 WITHOUT REGARD TO PAYMENT ABILITY OF CON-
25 SUMER.—

1 “(A) IN GENERAL.—A creditor may not
2 extend credit to a consumer under a high-cost
3 mortgage unless a reasonable creditor would be-
4 lieve at the time the loan is closed that the con-
5 sumer or consumers that are residing or will re-
6 side in the residence subject to the mortgage
7 will be able to make the scheduled payments as-
8 sociated with the loan, based upon a consider-
9 ation of current and expected income, current
10 obligations, employment status, and other fi-
11 nancial resources, other than equity in the resi-
12 dence.

13 “(B) PRESUMPTION OF ABILITY.—For
14 purposes of this subsection, there shall be a re-
15 buttable presumption that a consumer is able to
16 make the scheduled payments to repay the obli-
17 gation if, at the time the loan is consummated,
18 the consumer’s total monthly debts, including
19 amounts under the loan, do not exceed 50 per-
20 cent of his or her monthly gross income as
21 verified by tax returns, payroll receipts, or other
22 third-party income verification.”.

1 **SEC. 303. ADDITIONAL REQUIREMENTS FOR CERTAIN**
2 **MORTGAGES.**

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

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

8 (2) by inserting after subsection (i) the fol-
9 lowing new subsections:

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

15 “(k) LATE FEES.—

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

19 “(A) in an amount in excess of 4 percent
20 of the amount of the payment past due;

21 “(B) unless the loan documents specifically
22 authorize the charge or fee;

23 “(C) before the end of the 15-day period
24 beginning on the date the payment is due, or in
25 the case of a loan on which interest on each in-
26 stallment is paid in advance, before the end of

1 the 30-day period beginning on the date the
2 payment is due; or

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

5 “(2) COORDINATION WITH SUBSEQUENT LATE
6 FEES.—If a payment is otherwise a full payment for
7 the applicable period and is paid on its due date or
8 within an applicable grace period, and the only delin-
9 quency or insufficiency of payment is attributable to
10 any late fee or delinquency charge assessed on any
11 earlier payment, no late fee or delinquency charge
12 may be imposed on such payment.

13 “(3) FAILURE TO MAKE INSTALLMENT PAY-
14 MENT.—If, in the case of a loan agreement the
15 terms of which provide that any payment shall first
16 be applied to any past due principal balance, the
17 consumer fails to make an installment payment and
18 the consumer subsequently resumes making install-
19 ment payments but has not paid all past due install-
20 ments, the creditor may impose a separate late pay-
21 ment charge or fee for any principal due (without
22 deduction due to late fees or related fees) until the
23 default is cured.

24 “(1) ACCELERATION OF DEBT.—No high-cost mort-
25 gage may contain a provision which permits the creditor,

1 in its sole discretion, to accelerate the indebtedness. This
2 provision shall not apply when repayment of the loan has
3 been accelerated by default, pursuant to a due-on-sale pro-
4 vision, or pursuant to a material violation of some other
5 provision of the loan documents unrelated to the payment
6 schedule.

7 “(m) RESTRICTION ON FINANCING POINTS AND
8 FEES.—No creditor may directly or indirectly finance, in
9 connection with any high-cost mortgage, any of the fol-
10 lowing:

11 “(1) Any prepayment fee or penalty payable by
12 the consumer in a refinancing transaction if the
13 creditor or an affiliate of the creditor is the
14 noteholder of the note being refinanced.

15 “(2) Any points or fees.”

16 (b) PROHIBITIONS ON EVASIONS.—Section 129 of
17 the Truth in Lending Act (15 U.S.C. 1639) is amended
18 by inserting after subsection (p) (as so redesignated by
19 subsection (a)(1)) the following new subsection:

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

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

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

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

6 (c) MODIFICATION OR DEFERRAL FEES.—Section
7 129 of the Truth in Lending Act (15 U.S.C. 1639) is
8 amended by inserting after subsection (q) (as added by
9 subsection (b) of this section) the following new sub-
10 section:

11 “(r) MODIFICATION AND DEFERRAL FEES PROHIB-
12 ITED.—A creditor may not charge a consumer any fee to
13 modify, renew, extend, or amend a high-cost mortgage, or
14 to defer any payment due under the terms of such mort-
15 gage, unless the modification, renewal, extension or
16 amendment results in a lower annual percentage rate on
17 the mortgage for the consumer and then only if the
18 amount of the fee is comparable to fees imposed for simi-
19 lar transactions in connection with consumer credit trans-
20 actions that are secured by a consumer’s principal dwell-
21 ing and are not high-cost mortgages.”.

22 (d) PAYOFF STATEMENT.—Section 129 of the Truth
23 in Lending Act (15 U.S.C. 1639) is amended by inserting
24 after subsection (r) (as added by subsection (c) of this
25 section) the following new subsection:

1 “(s) PAYOFF STATEMENT.—

2 “(1) FEES.—

3 “(A) IN GENERAL.—Except as provided in
4 subparagraph (B), no creditor or servicer may
5 charge a fee for informing or transmitting to
6 any person the balance due to pay off the out-
7 standing balance on a high-cost mortgage.

8 “(B) TRANSACTION FEE.—When payoff in-
9 formation referred to in subparagraph (A) is
10 provided by facsimile transmission or by a cou-
11 rier service, a creditor or servicer may charge a
12 processing fee to cover the cost of such trans-
13 mission or service in an amount not to exceed
14 an amount that is comparable to fees imposed
15 for similar services provided in connection with
16 consumer credit transactions that are secured
17 by the consumer’s principal dwelling and are
18 not high-cost mortgages.

19 “(C) FEE DISCLOSURE.—Prior to charging
20 a transaction fee as provided in subparagraph
21 (B), a creditor or servicer shall disclose that
22 payoff balances are available for free pursuant
23 to subparagraph (A).

24 “(D) MULTIPLE REQUESTS.—If a creditor
25 or servicer has provided payoff information re-

1 ferred to in subparagraph (A) without charge,
2 other than the transaction fee allowed by sub-
3 paragraph (B), on 4 occasions during a cal-
4 endar year, the creditor or servicer may there-
5 after charge a reasonable fee for providing such
6 information during the remainder of the cal-
7 endar year.

8 “(2) PROMPT DELIVERY.—Payoff balances shall
9 be provided within a reasonable time but in any
10 event no more than 5 business days after receiving
11 a request by a consumer or a person authorized by
12 the consumer to obtain such information.”.

13 (e) PRE-LOAN COUNSELING REQUIRED.—Section
14 129 of the Truth in Lending Act (15 U.S.C. 1639) is
15 amended by inserting after subsection (s) (as added by
16 subsection (d) of this section) the following new sub-
17 section:

18 “(t) PRE-LOAN COUNSELING.—

19 “(1) IN GENERAL.—A creditor may not extend
20 credit to a consumer under a high-cost mortgage
21 without first receiving certification from a counselor
22 that is approved by the Secretary of Housing and
23 Urban Development, or at the discretion of the Sec-
24 retary, a state housing finance authority, that the
25 consumer has received counseling on the advisability

1 of the loan transaction. Such counselor shall not be
2 employed by the creditor or an affiliate of the cred-
3 itor or be affiliated with the creditor.

4 “(2) DISCLOSURES REQUIRED PRIOR TO COUN-
5 SELING.—No counselor may certify that a consumer
6 has received counseling on the advisability of the
7 loan transaction unless the counselor can verify that
8 the consumer has received each statement required
9 (in connection with such loan) by section 129 of this
10 title or by the Real Estate Settlement Procedures
11 Act of 1974 with respect to the transaction.

12 “(3) REGULATIONS.—The Secretary of Housing
13 and Urban Development may prescribe such regula-
14 tions as the Secretary determines to be appropriate
15 to carry out the requirements of paragraph (1).”.

16 **SEC. 304. REGULATIONS.**

17 (a) IN GENERAL.—The Board of Governors of the
18 Federal Reserve System shall publish regulations imple-
19 menting this title and the amendments made by this title
20 in final form before the end of the 6-month period begin-
21 ning on the date of the enactment of this Act.

22 (b) CONSUMER MORTGAGE EDUCATION.—

23 (1) REGULATIONS.—The Board of Governors of
24 the Federal Reserve System may prescribe regula-
25 tions requiring or encouraging creditors to provide

1 consumer mortgage education to prospective cus-
2 tomers or direct such customers to qualified con-
3 sumer mortgage education or counseling programs
4 in the vicinity of the residence of the consumer.

5 (2) COORDINATION WITH STATE LAW.—No re-
6 quirement established by the Board of Governors of
7 the Federal Reserve System pursuant to paragraph
8 (1) shall be construed as affecting or superseding
9 any requirement under the law of any State with re-
10 spect to consumer mortgage counseling or education.