Summary of Manager's Amendment to
H.R. 3915

Title I (Mortgage Origination)

Subtitle A. Licensing System for Residential Mortgage Loan Originators.

- This subtitle is from Rep. Bachus' bill (HR 3012) and provides for licensing and registration of individual mortgage brokers and registration of bank employees that originate mortgages, as well as the establishment of a Nationwide Mortgage Licensing System and Registry (NMLSR).
  - Applicants for State license and registration will furnish certain information to the NMLSR, including fingerprints and personal history and experience, and meet minimum standards including pre-licensing education and written tests.
  - Federal banking agencies will develop and maintain a system for registering the employees of banks and their subsidiaries as registered loan originators with the NMLSR.
  - If a State does not have a system that meets the minimum standards for State-licensed loan originators or does not participate in the NMLSR, then HUD will establish a backup licensing system for loan originators that operate in that State. HUD will be granted enforcement authority over such loan originators similar to banking regulators.

Subtitle B. Residential Mortgage Loan Origination Standards

- Federal Duty of Care: All mortgage originators (including individuals as well as companies and banks that originate mortgages) will be subject to a federal duty of care that requires (1) licensing and registration, as applicable, under State or Federal law (including under subtitle A), (2) presenting consumers with appropriate mortgage loans (i.e., consumer has reasonable ability to repay and receives net tangible benefit, and loan does not have predatory characteristics), (3) making full disclosures to consumers, (4) certifying to lenders compliance with mortgage origination requirements, and (5) including a mortgage originator's unique identifier in loan documents.

- Anti-Steering: For mortgage loans that are not prime loans, no mortgage originator can receive, and no person can pay, any incentive compensation (including yield spread premiums) that varies with the terms of the mortgage loan (except for size of the loan and number of loans). Regulations will be promulgated to prohibit mortgage originators from (1) steering any consumer to a loan that the consumer lacks a reasonable ability to repay, does not provide net tangible benefit, or has predatory characteristics, (2) steering any consumer from a prime loan to a subprime loan, and (3) engaging in abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but different race, ethnicity, gender, or age.

- Remedies: Remedies will be up to three times broker fees plus costs.

Title II (Minimum Standards for All Mortgages)

- Ability to Repay/Net Tangible Benefits: Based on Federal bank regulatory guidance and North Carolina standard. Requires creditors to make a reasonable determination, at the time the mortgage is consummated, that:
  - the consumer has a *reasonable ability to repay* the loan; or
  - for refinancing, the refinanced loan will provide a *net tangible benefit* to the consumer.

- Safe Harbor: A presumption can be made that the minimum standards (reasonable ability to repay and net tangible benefit) are met for "qualified mortgages" and "qualified safe harbor mortgages." Qualified mortgages (prime loans) are presumed to meet the minimum standards and this presumption may not be rebutted. For qualified safe harbor loans, the presumption may be rebutted only against creditors.
  - *Qualified mortgages* are prime loans with APRs that do not exceed the North Carolina standard.
  - *Qualified safe harbor mortgages* are loans with (1) documented consumer income, (2) underwriting process based on fully indexed rate (taking into account taxes, insurance, and assessments), (3) no negative amortization, (4) other requirements that may be established by regulation, AND (5) one of the following: (i) fixed payment for at least 5 years, (ii) for variable-rate loans, APR that varies less than 3% over the interest-rate index, OR (iii) DTI not greater than a percentage prescribed by regulation.

- Assignee/Securitizer Liability (does not extend to trusts and investors): Subject to exemptions below, for loans that violate the minimum standards (reasonable ability to repay and net tangible benefits), a consumer has an individual cause of action against assignees and securitizers for rescission of the loan and the consumer's costs for rescission.
  - *Exemption from Liability*: An assignee/securitizer will not be liable for a loan that violates the minimum standards if the assignee/securitizer provides a cure to make the loan conform to the minimum standards within 90 days of receiving notice from the consumer, OR (1) has a policy against buying mortgage loans that are not qualified mortgages or qualified safe harbor mortgages and exercises reasonable due diligence to adhere to such policy AND (2) has obtained representations and warranties from the seller or assignor of the loan regarding not selling or assigning loans that violate the minimum standards.[1]

- Defense to Foreclosure: When the holder of a mortgage loan or anyone acting on behalf of the holder initiates a judicial or non-judicial foreclosure, (1) the consumer who has a rescission right under this bill may assert such right as a defense to foreclosure against the holder to forestall foreclosure, or (2) if the rescission right has expired, the consumer may seek actual damages (plus costs) against the creditor, assignee, or securitizer.

- Effect on State Laws: Provides limited preemption of State laws relating only to assignee/securitizer liability (but not to creditor liability). Provides for a national standard and unique Federal remedy for assignee/securitizer liability arising from a claim regarding lack of reasonable ability to repay and lack of net tangible benefit. States, however, may pass laws or add remedies relating to the liability of other parties, including the creditors.

- Renters: Provides certain protections for renters when the homes they rent go into foreclosure.

- Additional Standards and Requirements: Prohibits certain prepayment penalties, as well as single-premium credit insurance and mandatory arbitration, for mortgage loans.

Title III (High-Cost Mortgage)

- This title is from the Miller-Watt bill of 109th Congress (HR 1182) and expands the scope of and enhances consumer protections for "high-cost loans" under HOEPA by, among other provisions:
  - lowering the APR trigger from 10% to 8% over comparable Treasuries (codifies existing Board standard),
  - lowering the points and fee trigger from 8% to 5% and including additional costs and fees in the trigger,
  - prohibiting the financing of points and fees,
  - prohibiting excessive fees for payoff information, modifications, or late payments,
  - prohibiting practices that increase the risk of foreclosure, such as balloon payments, encouraging a borrower to default, and call provisions, and
  - requiring pre-loan counseling.

Title IV (Office of Housing Counseling)

- This title is from Rep. Biggert's bill (HR 3019) and establishes within HUD an Office of Housing Counseling that will conduct activities relating to homeownership and rental housing counseling.
  - Requires HUD to provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals.
  - Authorizes appropriation not to exceed $3 million for national public service multimedia campaigns for homeownership counseling services for fiscal years 2008, 2009, and 2010.
  - Requires HUD to provide financial and technical assistance to States, local governments, and nonprofit organization regarding the establishment and operation of related educational programs, and authorizes appropriation of $45 million for each of fiscal years 2008 through 2011.
  - Directs HUD to study and report to Congress on the root causes of the default and foreclosure of home loans.

[1] In other words, assignees and securitizers will be liable under this provision only if they fail all four of the following tests: (1) the loan does not meet the "ability to repay" or "net tangible benefit" standard; (2) the loan is neither a prime loan ("qualified mortgage") nor a safe harbor loan ('qualified safe harbor mortgage"); (3) the loan is not cured; and (4) there is no policy, no reasonable due diligence, and no reps and warranties as specified in the bill.