

108TH CONGRESS  
1ST SESSION

# H. R. 833

To combat unfair and deceptive practices in the high-cost mortgage market, establish a consumer mortgage protection board, and establish licensing and minimum standards for mortgage brokers, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 13, 2003

Mr. NEY (for himself, Mr. LUCAS of Kentucky, Mr. GILLMOR, and Mr. GARY G. MILLER of California) introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To combat unfair and deceptive practices in the high-cost mortgage market, establish a consumer mortgage protection board, and establish licensing and minimum standards for mortgage brokers, 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       “Responsible Lending Act”.

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

Sec. 1. Short title; table of contents.

## TITLE I—HIGH-COST MORTGAGES

- Sec. 101. Definitions relating to high-cost mortgages.
- Sec. 102. Amendments to existing requirements for high-cost mortgages.
- Sec. 103. Amendments to liability provisions relating to high-cost mortgages.
- Sec. 104. Coordination with State law.
- Sec. 105. Continuation of identifications under the Alternative Mortgage Transaction Parity Act of 1982.
- Sec. 106. Effective date.

## TITLE II—CONSUMER MORTGAGE PROTECTION BOARD

- Sec. 201. Establishment.
- Sec. 202. Counseling procedures.
- Sec. 203. Grants for housing counseling assistance.
- Sec. 204. Requirements to use HUD-certified counselors under HUD programs.
- Sec. 205. Updating and simplification of mortgage information booklet.

## TITLE III—REQUIREMENTS FOR MORTGAGE BROKERS

## Subtitle A—Licensing and Minimum Standards

- Sec. 301. State regulation of mortgage brokers.
- Sec. 302. Federal mortgage broker requirements.
- Sec. 303. Definitions.

## Subtitle B—Database of Licensed Mortgage Brokers

- Sec. 311. Establishment.
- Sec. 312. Database.
- Sec. 313. Fees.
- Sec. 314. Confidentiality of information.
- Sec. 315. Liability provisions.

# TITLE I—HIGH-COST MORTGAGES

## SEC. 101. DEFINITIONS RELATING TO HIGH-COST MORT- GAGES.

(a) HIGH-COST MORTGAGE DEFINED.—Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)(1)) is amended by striking all that precedes paragraph (2) and inserting the following:

“(aa) HIGH-COST MORTGAGE DEFINED.—

“(1) IN GENERAL.—The term ‘high-cost mortgage’, and a mortgage referred to in this subsection,

1 means a consumer credit transaction that is secured  
2 by the consumer's principal dwelling, other than a  
3 residential mortgage transaction, a reverse mortgage  
4 transaction, or a transaction under an open end  
5 credit plan, if any of the following apply with respect  
6 to such consumer credit transaction:

7           “(A) The transaction is secured by a first  
8 mortgage on the consumer's principal dwelling  
9 and the annual percentage rate on the credit, at  
10 the consummation of the transaction, will ex-  
11 ceed by more than 8 percentage points the yield  
12 on Treasury securities having comparable peri-  
13 ods of maturity on the fifteenth day of the  
14 month immediately preceding the month in  
15 which the application for the extension of credit  
16 is received by the creditor.

17           “(B) The transaction is secured by a jun-  
18 ior or subordinate mortgage on the consumer's  
19 principal dwelling and the annual percentage  
20 rate on the credit, at the consummation of the  
21 transaction, will exceed by more than 10 per-  
22 centage points the yield on Treasury securities  
23 having comparable periods of maturity on the  
24 fifteenth day of the month immediately pre-  
25 ceding the month in which the application for

1 the extension of credit is received by the cred-  
2 itor.

3 “(C) The total loan amount exceeds  
4 \$30,000 and total points and fees payable on  
5 the transaction will exceed 6 percent of the  
6 total loan amount.

7 “(D) The total loan amount is \$30,000 or  
8 less and total points and fees payable on the  
9 transaction will exceed 7 percent of the total  
10 loan amount.”.

11 (b) POINTS AND FEES DEFINED.—Section 103(aa)  
12 of the Truth in Lending Act (15 U.S.C. 1602(aa)) is  
13 amended—

14 (1) by striking paragraph (3);

15 (2) by striking paragraph (4) and inserting the  
16 following new paragraph:

17 “(3) DEFINITION OF POINTS AND FEES.—

18 “(A) IN GENERAL.—For purposes of sub-  
19 paragraphs (C) and (D) of paragraph (1), the  
20 term ‘points and fees’ shall exclude prepayment  
21 fees, yield-spread premiums, and borrower cred-  
22 its and shall include—

23 “(i) all items included in the finance  
24 charge, except interest and the time-price  
25 differential;

1 “(ii) all compensation paid directly to  
2 mortgage brokers by or on behalf of the  
3 consumer (other than borrower credits);  
4 and

5 “(iii) each of the charges listed in sec-  
6 tion 106(e) (except an escrow for future  
7 payment of taxes or insurance), unless—

8 “(I) the charge is reasonable and  
9 competitive;

10 “(II) the creditor receives no di-  
11 rect compensation; and

12 “(III) the charge is paid to a  
13 third party; and

14 “(iv) such other charges as the Board  
15 determines to be appropriate.

16 “(B) BONA FIDE DISCOUNT POINTS EX-  
17 CLUDABLE.—Not more than 2 bona fide loan  
18 discount points in connection with the loan  
19 transaction may be excluded from the amount  
20 of points and fees taken into account for pur-  
21 poses of paragraph (1).

22 “(C) BONA FIDE DISCOUNT POINT DE-  
23 FINED.—For purposes of subparagraph (B),  
24 the term ‘bona fide discount point’ means any  
25 loan discount point which is paid for the pur-

(c) TECHNICAL AND CONFORMING AMENDMENT.—

Paragraph (2) of section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)(2)) is amended by striking “specified in paragraph (1)(A)” and inserting “specified in subparagraph (A) or (B) of paragraph (1)”.

(a) PREPAYMENT PENALTIES.—Section 129(c)(2)(C) of the Truth in Lending Act (15 U.S.C. 1639(c)(2)(C)) is amended by striking “5-year period” and inserting “4-year period”.

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1 “(1) IN GENERAL.—A mortgage”; and

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

4 “(2) EXCEPTION.—Paragraph (1) shall not  
5 apply when the payment schedule is adjusted to ac-  
6 count for the seasonal or irregular income of the ob-  
7 ligor or if the purpose of the loan is a bridge loan  
8 made in connection with the acquisition or construc-  
9 tion of a dwelling intended to become the obligor’s  
10 principal dwelling.

11 “(3) NOTICE REQUIRED.—A creditor that offers  
12 a high-cost mortgage having a balloon payment term  
13 in accordance with paragraph (2) shall clearly dis-  
14 close to the consumer that the loan contains such a  
15 term, the balloon payment amount that will be owed  
16 by the consumer, and that balloon payments are per-  
17 missible under the circumstances described in para-  
18 graph (2) but are not required for such types of  
19 mortgages.”.

20 (c) NEGATIVE AMORTIZATION.—Subsection (f) of  
21 section 129 of the Truth in Lending Act (15 U.S.C.  
22 1639(f)) is amended—

23 (1) by striking “AMORTIZATION.—A mortgage  
24 referred to in section 103 (aa)” and inserting “AM-  
25 ORTIZATION.—

1 “(1) IN GENERAL.—A high-cost mortgage”; and

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

4 “(2) EXCEPTION FOR PERIOD OF FORBEAR-  
5 ANCE.—Paragraph (1) shall not apply with respect  
6 to negative amortization resulting from periods of  
7 temporary forbearance allowed by the creditor.”.

8 (d) DISCLOSURE OF FINANCING OF POINTS OR  
9 FEES.—Section 129 of the Truth in Lending Act (15  
10 U.S.C. 1639) is amended by adding at the end the fol-  
11 lowing new subsection:

12 “(m) DISCLOSURE OF FINANCING OF POINTS OR  
13 FEES.—If, in connection with the formation or con-  
14 summation of a high-cost mortgage, any portion of the  
15 points, fees, or other charges payable to the creditor or  
16 any third party are included, directly or indirectly, in the  
17 principal amount of the loan or otherwise financed by the  
18 creditor, the creditor shall disclose that fact to the con-  
19 sumer together with a statement that such treatment of  
20 any such point, fee, or charge is not legally required.”.

21 (e) PROHIBITION ON UNFAIR ARBITRATION RE-  
22 QUIREMENTS.—Section 129 of the Truth in Lending Act  
23 (15 U.S.C. 1639) is amended by inserting after subsection  
24 (m) (as added by subsection (d) of this section) the fol-  
25 lowing new subsection:



1 “(n) NO UNFAIR ARBITRATION CLAUSES.—

2 “(1) IN GENERAL.—A high-cost mortgage may  
3 not be subject to a mandatory arbitration clause  
4 that is oppressive, unfair, unconscionable, or sub-  
5 stantially in derogation of the rights of consumers.

6 “(2) SAFE HARBOR.—An arbitration clause  
7 that—

8 “(A) establishes the venue for the arbitra-  
9 tion in the Federal judicial district or division  
10 in which the real property that is the security  
11 for the high-cost mortgage is located;

12 “(B) complies with the standards set forth  
13 by a nationally recognized arbitration organiza-  
14 tion, such as the Statement of Principles of the  
15 National Consumer Dispute Advisory Com-  
16 mittee of the American Arbitration Association  
17 or any comparable standards of such other or-  
18 ganization as may be approved by the Board of  
19 Governors of the Federal Reserve System, or  
20 any official or employee of the Board duly au-  
21 thorized by the Board; and

22 “(C) requires the creditor to bear the rea-  
23 sonable costs of all parties to the arbitration,  
24 including the production of fact witnesses and

1 documents, during the first 2 days of such arbi-  
2 tration,  
3 shall be presumed not to violate the proscriptions of  
4 paragraph (1).”.

5 (f) PROHIBITION ON EVASIONS THROUGH STRUC-  
6 TURING TRANSACTIONS OR RECIPROCAL ARRANGE-  
7 MENTS.—Section 129 of the Truth in Lending Act (15  
8 U.S.C. 1639) is amended by inserting after subsection (n)  
9 (as added by subsection (e) of this section) the following  
10 new subsection:

11 “(o) PROHIBITION ON EVASIONS THROUGH STRUC-  
12 TURING TRANSACTIONS OR RECIPROCAL ARRANGE-  
13 MENTS.—

14 “(1) IN GENERAL.—No creditor, or any affiliate  
15 of a creditor, may take any action for the purpose  
16 of, or with the intent to, circumvent or evade any re-  
17 quirement of this title with respect to high-cost  
18 mortgages, including—

19 “(A) entering into any reciprocal arrange-  
20 ment;

21 “(B) dividing any loan transaction into  
22 separate parts for the purpose and with the in-  
23 tent of evading the provisions of this section; or

24 “(C) structuring or restructuring a credit  
25 transaction as a business loan, as credit ex-

1 tended under an open end consumer credit  
2 plan, or other form of credit for the purpose  
3 and with the intent of evading the provisions of  
4 this section when the loan would have been a  
5 high-cost mortgage if the loan had been struc-  
6 tured as a consumer loan or as credit not ex-  
7 tended under an open end consumer credit  
8 plan.

9 “(2) RECIPROCAL ARRANGEMENT DEFINED.—

10 For purposes of this subsection, the term ‘reciprocal  
11 arrangement’ means any agreement, understanding,  
12 or other arrangement under which—

13 “(A) 1 creditor or affiliate of a creditor  
14 agrees to engage in a transaction with, or on  
15 behalf of, another creditor (or affiliate of such  
16 other creditor), in exchange for

17 “(B) the agreement of the second creditor  
18 referred to in subparagraph (A), or any affiliate  
19 of such company, to engage in a transaction  
20 with, or on behalf of, the first creditor referred  
21 to in such subparagraph, or any affiliate of  
22 such company,

23 for the purpose of evading any requirement or prohi-  
24 bition under this title, or any other provision of any

1 Federal law or regulation relating to high-cost mort-  
2 gages.

3 “(3) REGULATIONS.—The Board shall prescribe  
4 such regulations as may be necessary to enforce the  
5 requirements of this subsection.”.

6 (g) NO ENCOURAGEMENT OF DEFAULT OR NON-  
7 PAYMENT ON PRIOR EXISTING LOAN.—Section 129 of the  
8 Truth in Lending Act (15 U.S.C. 1639) is amended by  
9 inserting after subsection (o) (as added by subsection (f)  
10 of this section) the following new subsection:

11 “(p) NO ENCOURAGEMENT OF DEFAULT OR  
12 SKIPPED PAYMENT.—No creditor may recommend or en-  
13 courage default or nonpayment (including nonpayment of  
14 any periodic payment) on an existing loan or other debt  
15 prior to and in connection with the closing or planned clos-  
16 ing of a high-cost mortgage that refinances all or any por-  
17 tion of such existing loan or debt.”.

18 (h) ABILITY TO REPAY.—Subsection (h) of section  
19 129 of the Truth in Lending Act (15 U.S.C. 1639(h)) is  
20 amended to read as follows:

21 “(h) PROHIBITION ON EXTENDING CREDIT WITH-  
22 OUT REGARD TO PAYMENT ABILITY OF CONSUMER.—

23 “(1) IN GENERAL.—A creditor shall not engage  
24 in a pattern or practice of extending credit to con-  
25 sumers under high-cost mortgages based on the con-

1       sumers' collateral without regard to the consumers'  
2       repayment ability, including the consumers' current  
3       and expected income, current obligations, and em-  
4       ployment.

5               “(2) PRESUMPTION OF ABILITY.—Unless a  
6       creditor knows or has reason to know otherwise and  
7       except as provided in paragraphs (3) and (4), a  
8       creditor may presume that a consumer is able to  
9       make the scheduled payments to repay the high-cost  
10      mortgage, if, at the time the extension of credit is  
11      approved, the consumer's total monthly payments  
12      due on outstanding obligations, including amounts  
13      owed under the high-cost mortgage, do not exceed  
14      53 percent of the consumer's monthly gross income,  
15      as verified by the credit application, the consumer's  
16      financial statement, a credit report, or any other  
17      reasonable means; except that if the consumer's re-  
18      payment ability is based substantially on fixed in-  
19      come, then income verification shall include reason-  
20      able documentation of such fixed income, in addition  
21      to any statement by the consumer.

22              “(3) PRESUMPTION NOT APPLICABLE IN CASE  
23      OF BALLOON PAYMENTS.—Paragraph (2) shall not  
24      apply in the case of any consumer who has an obli-  
25      gation secured by real property (that would be taken

1 into account for purposes of such paragraph) for  
2 which the aggregate amount of the regular periodic  
3 payments would not fully amortize the obligation.

4 “(4) VERIFICATION OF INCOME REQUIRED IN  
5 CASE OF CONSUMER WITHOUT EARNED INCOME.—A  
6 creditor may not rely on a consumer’s statement of  
7 income for purposes of paragraph (2) if the con-  
8 sumer has no earned income.”.

9 (i) PROHIBITION ON SINGLE PREMIUM CREDIT LIFE  
10 INSURANCE.—Section 129 of the Truth in Lending Act  
11 (15 U.S.C. 1639) is amended by inserting after subsection  
12 (p) (as added by subsection (g) of this section) the fol-  
13 lowing new subsection:

14 “(q) PROHIBITION ON SINGLE PREMIUM CREDIT  
15 LIFE INSURANCE.—No consumer credit transaction in-  
16 volving a high-cost mortgage may include the offer or sale  
17 of any insurance policy, on a single premium basis, that  
18 insures, guarantees, or indemnifies the repayment of the  
19 outstanding balance of the loan against death, illness, ac-  
20 cident, disability, or unemployment of the consumer.”.

21 (j) LIMITATIONS ON REFINANCING.—Section 129 of  
22 the Truth in Lending Act (15 U.S.C. 1639) is amended  
23 by inserting after subsection (q) (as added by subsection  
24 (i) of this section) the following new subsection:

25 “(r) LIMITATIONS ON REFINANCING.—

1           “(1) PROHIBITION DURING 1ST YEAR.—

2                   “(A) IN GENERAL.—No creditor may refi-  
3           nance a high-cost mortgage loan with another  
4           high-cost mortgage during the 1-year period be-  
5           ginning on the date of consummation of the  
6           prior high-cost mortgage loan.

7                   “(B) ARRANGEMENTS PROHIBITED.—No  
8           mortgage broker may arrange for the refi-  
9           nancing of a high-cost mortgage with another  
10          high-cost mortgage during the 1-year period be-  
11          ginning on the date of consummation of the  
12          prior high-cost mortgage.

13           “(2) EXCEPTION FOR LOWER INTEREST  
14          LOAN.—Paragraph (1) shall not apply if the sched-  
15          uled finance charge for the balance of the prior ex-  
16          isting high-cost mortgage exceeds the scheduled fi-  
17          nance charge for the subsequent high-cost mortgage  
18          by an amount greater than the amount of the fees  
19          and charges imposed by the creditor for such subse-  
20          quent mortgage.

21           “(3) REFINANCING OF CERTAIN LOW-INTEREST  
22          LOANS PROHIBITED FOR 10 YEARS.—A high-cost  
23          mortgage may not be made to refinance, and the  
24          proceeds of a high-cost mortgage may not be used  
25          to pay off, any below-market interest rate or sub-

1       sidized loan made by any government agency, gov-  
 2       ernment-sponsored enterprise, or nonprofit corpora-  
 3       tion (other than a mutual bank, mutual savings as-  
 4       sociation, or credit union) during the 10-year period  
 5       beginning when such low-interest loan was con-  
 6       summated, without either the express written con-  
 7       sent of the holder of the loan or certification from  
 8       a person or organization certified under section  
 9       106(e) of the Housing and Urban Development Act  
 10      of 1968 that the consumer has obtained credit coun-  
 11      seling.”.

12      (k) REQUIREMENTS RELATING TO HOME IMPROVE-  
 13      MENT CONTRACTS.—Section 129(i) of the Truth in Lend-  
 14      ing Act (15 U.S.C. 1639(i)) is amended—

15           (1) by striking “IMPROVEMENT CONTRACTS.—  
 16      A creditor” and inserting “IMPROVEMENT CON-  
 17      TRACTS.—

18           “(1) IN GENERAL.—A creditor”; and

19           (2) by adding at the end the following new  
 20      paragraph:

21           “(2) NO PAYMENT IN FULL WITHOUT PROOF  
 22      OF COMPLETION OF THE WORK.—

23           “(A) IN GENERAL.—No creditor may use  
 24      the proceeds of a high-cost mortgage to make  
 25      a final payment or payment in full to a home



1 improvement contractor under a home improve-  
2 ment contract without proof that the contractor  
3 has fully performed the obligations of the con-  
4 tract.

5 “(B) SIGNED STATEMENT OF CON-  
6 SUMER.—A signed statement by the consumer  
7 who entered into the high-cost mortgage and  
8 home improvement contract referred to in sub-  
9 paragraph (A) that the contractor has fully per-  
10 formed the contract shall constitute proof for  
11 purposes of such subparagraph.”.

12 (l) ADDITIONAL SPECIFIC DISCLOSURES.—Section  
13 129(a)(1) of the Truth in Lending Act (15 U.S.C.  
14 1639(a)) is amended by adding at the end the following  
15 new subparagraphs:

16 “(C) ‘The rate of interest and the amount  
17 of fees you pay on a loan may vary depending  
18 on which lender or broker you select.’

19 “(D) ‘The timing and amount of payments  
20 on debts you already are carrying contribute to  
21 the credit rating that is used to determine  
22 whether you may get a new loan and how much  
23 you will pay for that new loan. You should  
24 NOT accept any advice to ignore or delay mak-  
25 ing any payments on loans you already have,

1           even if those loans will be paid off with the new  
2           loan.’

3                   “(E) ‘You may get into serious financial  
4           difficulties if you use this loan to pay off old  
5           debts and then run up other new debts.’”.

6           (m) CREDIT REPORTING REQUIREMENTS.—Section  
7   129 of the Truth in Lending Act (15 U.S.C. 1639) is  
8   amended by inserting after subsection (r) (as added by  
9   subsection (j) of this section) the following new subsection:

10          “(s) CREDIT REPORTING REQUIREMENTS.—

11               “(1) PERIODIC FULL FILE REPORTING RE-  
12          QUIRED.—A creditor with respect to a high-cost  
13          mortgage (or the assignee or servicer of such mort-  
14          gage) shall furnish, at least once in each calendar  
15          quarter, a full file credit report with respect to all  
16          high-cost mortgages held or serviced by such cred-  
17          itor, assignee, or servicer to a consumer reporting  
18          agency that compiles and maintains files on con-  
19          sumers on a nationwide basis (as defined in section  
20          603(p) of the Fair Credit Reporting Act), except for  
21          information deleted in connection with the settle-  
22          ment of a dispute or consumer complaint.

23               “(2) RIGHT TO FREE CREDIT REPORTS IN CON-  
24          NECTION WITH HIGH-COST MORTGAGES.—Any ac-  
25          ceptance by a creditor of an application for a con-

1       sumer credit transaction the terms of which would  
2       cause the transaction to be defined as a high-cost  
3       mortgage shall be treated as an adverse action with  
4       respect to the consumer for purposes of sections  
5       612(b) and 615(a) of the Fair Credit Reporting Act,  
6       except that, the creditor need not refer to such ac-  
7       tion as adverse in any communication with the con-  
8       sumer.

9               “(3) FULL FILE CREDIT REPORT DEFINED.—  
10       For purposes of this subsection, the term ‘full file  
11       credit report’ means a report given to a consumer  
12       reporting agency on a regular basis reflecting the  
13       status of every loan in the server’s portfolio as of the  
14       report date.”.

15       (n) NO CALL PROVISION.—Section 129 of the Truth  
16       in Lending Act (15 U.S.C. 1639) is amended by inserting  
17       after subsection (s) (as added by subsection (m) of this  
18       section) the following new subsection:

19               “(t) NO CALL PROVISION.—

20               “(1) IN GENERAL.—A high-cost mortgage may  
21       not include terms under which the indebtedness may  
22       be accelerated by the creditor, in the creditor’s sole  
23       discretion.

1           “(2) EXCEPTION.—Paragraph (1) shall not  
2       apply when repayment of the loan has been acceler-  
3       ated—

4           “(A) by default or pursuant to a due-on-  
5       sale provision or some other provision of the  
6       loan documents unrelated to the payment  
7       schedule; or

8           “(B) due to any action or omission by the  
9       consumer that adversely affects the creditor’s  
10      security interest in the residence or any rights  
11      of the creditor in such security.”.

12       (o) MODIFICATION AND DEFERRAL FEES PROHIB-  
13   ITED.—Section 129 of the Truth in Lending Act (15  
14   U.S.C. 1639) is amended by inserting after subsection (t)  
15   (as added by subsection (n) of this section) the following  
16   new subsection:

17       “(u) MODIFICATION AND DEFERRAL FEES PROHIB-  
18   ITED.—

19           “(1) IN GENERAL.—A creditor may not charge  
20      a consumer any fee to modify, renew, extend, or  
21      amend a high-cost mortgage, or to defer any pay-  
22      ment due under the terms of such mortgage, unless  
23      the modification, renewal, extension, or amendment  
24      results in a lower annual percentage rate on the  
25      mortgage for the consumer and then only if the

1 amount of the fee is comparable to fees imposed for  
2 similar transactions in connection with consumer  
3 credit transactions that are secured by a consumer's  
4 principal dwelling and are not high-cost mortgages.

5 “(2) EXCEPTION FOR CERTAIN WORKOUTS.—  
6 Paragraph (1) shall not apply in the case of an ex-  
7 isting high-cost mortgage that is in default or more  
8 than 60 days delinquent, if the modification, re-  
9 newal, extension, or amendment is part of the reso-  
10 lution or workout of the default or delinquency.”.

11 (p) PROFITING ON FORECLOSURES PROHIBITED.—  
12 Section 129 of the Truth in Lending Act (15 U.S.C. 1639)  
13 is amended by inserting after subsection (u) (as added by  
14 subsection (o) of this section) the following new sub-  
15 section:

16 “(v) LENDER PROFITS ON FORECLOSURES PROHIB-  
17 ITED.—

18 “(1) IN GENERAL.—

19 “(A) CREDITOR, ASSIGNEE, OR AFFILIATE  
20 REACQUIRES PROPERTY INTEREST AT FORE-  
21 CLOSURE SALE.—If the creditor, any assignee  
22 of the creditor, or any affiliate of such creditor  
23 or assignee is the successful bidder at a judicial  
24 or nonjudicial foreclosure sale of a residence of  
25 a consumer that was the security for a high-

1 cost mortgage, any profit realized by a creditor,  
2 any assignee of the creditor, or any affiliate of  
3 such creditor or assignee realized upon the sub-  
4 sequent resale or other disposition of the prop-  
5 erty that was the security for a high-cost mort-  
6 gage shall be paid to the consumer.

7 “(B) CREDITOR, ASSIGNEE, OR AFFILIATE  
8 DOES NOT REACQUIRE PROPERTY INTEREST AT  
9 FORECLOSURE SALE.—If the creditor, any as-  
10 signee of the creditor, or any affiliate of such  
11 creditor or assignee is not the successful bidder  
12 at a judicial or nonjudicial foreclosure sale of a  
13 residence of a consumer that was the security  
14 for a high cost mortgage, any surplus realized  
15 in excess of the sum of—

16 “(i) the amount to which the creditor  
17 or assignee or affiliate or others have a  
18 right under the law of the State where the  
19 real property that was the security for a  
20 high-cost mortgage is located; and

21 “(ii) the amounts referred to in sub-  
22 paragraphs (A), (B), and (C) of paragraph  
23 (4),

24 shall be paid to the consumer.

1           “(2) PROFIT DEFINED.—For purposes of this  
2 subsection, the term ‘profit’ means the amount  
3 which is equal to—

4           “(A) the amount paid to the creditor, any  
5 assignee of the creditor, or any affiliate of such  
6 creditor or assignee by a third party for the  
7 sale of the property to the third party, minus

8           “(B) the amount to which the creditor or  
9 assignee has a right under the terms of the  
10 mortgage.

11          “(3) SURPLUS DEFINED.—

12          “(A) IN GENERAL.—For the purposes of  
13 paragraph (1)(B), the term ‘surplus’ means the  
14 amount which is equal to—

15               “(i) the amount derived from the sale  
16 as determined by the law of the State  
17 where the real property that was the secu-  
18 rity for a high-cost mortgage is located;  
19 minus

20               “(ii) the amounts disbursed to others  
21 under the processes, priorities and proce-  
22 dures for disbursement of surplus funds,  
23 and for determining the rights and prior-  
24 ities between consumers and others who  
25 may have an interest in or claim to the

1 surplus funds, as determined by the law of  
2 the State where the real property that was  
3 the security for a high-cost mortgage is lo-  
4 cated.

5 “(B) APPLICABLE DEFINITION IF STATE  
6 LAW DOES NOT PROVIDE FOR THE DETERMINA-  
7 TIONS OF AMOUNTS DESCRIBED IN SUBPARA-  
8 GRAPH (A).—If the law of the State where the  
9 real property that was the security for a high-  
10 cost mortgage is located does not provide for  
11 the determination of the amounts described in  
12 clauses (i) and (ii) of subparagraph (A), the  
13 term ‘surplus’ means that portion of the  
14 amount derived from the sale that exceeds the  
15 sum of the amounts described in subparagraphs  
16 (A), (B), and (C) of paragraph (4).

17 “(4) CREDITOR’S AMOUNT.—The amount to  
18 which the creditor or assignee has a right under the  
19 terms of the mortgage, for purposes of this sub-  
20 section, includes—

21 “(A) all foreclosure expenses, including  
22 reasonable attorneys’ fees and expenses reason-  
23 ably incurred to secure, market, and preserve  
24 the property through the date of the foreclosure  
25 sale, incurred by the creditor or assignee;



1           “(B) all amounts due the creditor or as-  
2           signee under the terms of the agreement  
3           through the date of the judicial or nonjudicial  
4           foreclosure sale referred to in paragraph (1);

5           “(C) all amounts paid by the creditor or  
6           assignee to other lien holders of record on the  
7           property; and

8           “(D) all postforeclosure expenses, including  
9           reasonable attorneys’ fees, commissions, ad-  
10          vances, and expenses reasonably incurred to se-  
11          cure, market, preserve, improve and sell the  
12          property to a third party referred to in para-  
13          graph (1), incurred by the creditor or as-  
14          signee.”.

15          (q) INCREASED INTEREST RATE UPON DEFAULT  
16          PROHIBITED.—Section 129 of the Truth in Lending Act  
17          (15 U.S.C. 1639) is amended by inserting after subsection  
18          (v) (as added by subsection (p) of this section) the fol-  
19          lowing new subsection:

20          “(w) APPLICABILITY OF LIMITATIONS ON VARIABLE  
21          RATE CHANGES.—In the case of a high-cost mortgage  
22          that is subject to a variable rate of interest based on an  
23          index or rate of interest which is publicly available and  
24          is not under the control of the creditor, subsection (d)  
25          shall not apply to changes in the rate of interest due to

1 any change in such index, to the extent the change of in-  
 2 terest is not due in any part to a default by the consumer  
 3 or a permissible acceleration by the creditor.”.

4 (r) PREPAYMENT OF PERIODIC PAYMENTS FROM  
 5 PROCEEDS PROHIBITED.—Section 129(g) of the Truth in  
 6 Lending Act (15 U.S.C. 1639) is amended to read as fol-  
 7 lows:

8 “(g) PREPAYMENT OF PERIODIC PAYMENTS FROM  
 9 PROCEEDS PROHIBITED.—No high-cost mortgage may in-  
 10 clude terms under which any periodic payments of interest  
 11 or principal due under such mortgage may be paid in ad-  
 12 vance or otherwise deducted from the proceeds of the  
 13 loan.”.

14 (s) PAYOFF STATEMENTS.—Section 129 of the Truth  
 15 in Lending Act (15 U.S.C. 1639) is amended by inserting  
 16 after subsection (w) (as added by subsection (q) of this  
 17 section) the following new subsection:

18 “(x) PAYOFF STATEMENT.—

19 “(1) FEES.—

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

1           “(B) TRANSACTION FEE.—When payoff in-  
2           formation referred to in subparagraph (A) is  
3           provided by facsimile transmission or by a cou-  
4           rier service, a creditor or servicer may charge a  
5           processing fee not to exceed an amount that is  
6           comparable to fees imposed for similar services  
7           provided in connection with consumer credit  
8           transactions that are secured by the consumer’s  
9           principal dwelling and are not residential mort-  
10          gage transactions or high-cost mortgages.

11          “(C) MULTIPLE REQUESTS.—If a creditor  
12          or servicer has provided payoff information re-  
13          ferred to in subparagraph (A) without charge,  
14          other than the transaction fee allowed by sub-  
15          paragraph (B), on 4 occasions during a cal-  
16          endar year, the creditor or servicer may there-  
17          after charge a reasonable fee for providing such  
18          information during the remainder of the cal-  
19          endar year.

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

1 **SEC. 103. AMENDMENTS TO LIABILITY PROVISIONS RELAT-**  
2 **ING TO HIGH-COST MORTGAGES.**

3 (a) RIGHT TO CURE.—Section 130(b) of the Truth  
4 in Lending Act (15 U.S.C. 1640(b)) is amended—

5 (1) by striking “(b) A creditor or assignee” and  
6 inserting “(b) RIGHT TO CURE.—

7 “(1) IN GENERAL.—Subject to paragraph (2), a  
8 creditor or assignee”; and

9 (2) by adding at the end the following new  
10 paragraph:

11 “(2) HIGH-COST MORTGAGES.—In addition to  
12 the provisions of paragraph (1), a creditor or as-  
13 signee shall have no liability under this section for  
14 any failure to comply with any requirement imposed  
15 under section 129 with respect to a high-cost mort-  
16 gage, if within 60 days after discovering an error,  
17 and prior to the institution of an action under this  
18 section, the creditor or assignee notifies the con-  
19 sumer of the error and makes appropriate restitu-  
20 tion to the consumer or modifies the terms of the  
21 credit transaction in such a way that the transaction  
22 is no longer a high-cost mortgage within the mean-  
23 ing of this title.”.

24 (b) COORDINATION OF CLASS ACTION DAMAGES  
25 WITH ACTUAL DAMAGES.—Section 130 of the Truth in

1 Lending Act (15 U.S.C. 1640) is amended by adding at  
2 the end the following new subsection:

3 “(j) CLASS ACTIONS RELATING TO HIGH-COST  
4 MORTGAGES.—

5 “(1) COORDINATION OF CLASS ACTION DAM-  
6 AGES WITH ACTUAL DAMAGES.—The maximum  
7 amount of general damages which may otherwise be  
8 imposed on any person under subsection (a)(2)(B)  
9 for violations of section 129 in a class action shall  
10 be reduced by the aggregate amount of actual dam-  
11 ages for which such person is liable to members of  
12 the class under subsection (a)(1).

13 “(2) PATTERN AND PRACTICE.—In determining  
14 the amount of any liability of any person under sub-  
15 section (a)(2)(B) for violations of section 129 in a  
16 class action, the court shall consider the pattern and  
17 practices of the person giving rise to the violations.”.

18 (c) AMENDMENT RELATING TO LIABILITY OF AS-  
19 SIGNEES.—

20 (1) IN GENERAL.—Paragraph (4) of section  
21 131(d) of the Truth in Lending Act (15 U.S.C.  
22 1641(d)) is amended by striking “mortgage referred  
23 to in section 103(aa)” and inserting “high-cost  
24 mortgage”.

1           (2) RIGHTS UPON ASSIGNMENT OF HIGH-COST  
2       MORTGAGES.—Section 131(d) of the Truth in Lend-  
3       ing Act (15 U.S.C. 1641(d)) is amended—

4                   (A) by redesignating paragraphs (2), (3),  
5                   and (4) as paragraphs (5), (6), and (7), respec-  
6                   tively; and

7                   (B) striking paragraph (1) and inserting  
8       the following new paragraphs:

9           “(1) IN GENERAL.—Any person who purchases  
10       or is otherwise assigned a high-cost mortgage shall  
11       be subject to an action under this title only if the  
12       violation for which such action or proceeding is  
13       brought is apparent on the face of the disclosure  
14       statement or the underlying promissory note.

15           “(2) AFFIRMATIVE CLAIMS AND DEFENSES.—  
16       Any person who purchases or is otherwise assigned  
17       a high-cost mortgage that was made, arranged, or  
18       assigned by a person financing home improvements  
19       to the dwelling of a consumer shall be subject to  
20       all affirmative claims and defenses which the con-  
21       sumer may have against the seller, home improve-  
22       ment contractor, broker, or creditor with respect to  
23       such mortgage or home improvements.

24           “(3) SAFE HARBOR.—A person who maintains  
25       and exercises procedures that are reasonably adapt-

1 ed to prevent the acquisition of high-cost mortgages  
2 containing violations of this title, which procedures  
3 are consistent with established industry norms and  
4 practices for secondary mortgage market trans-  
5 actions, shall not be liable for any such violations in  
6 connection with any loan acquired pursuant to such  
7 procedures.

8 “(4) CLARIFICATION OF TERMS.—For purposes  
9 of this title, the terms ‘purchaser’, ‘assignee’, and  
10 ‘person who purchases or is otherwise assigned’ in-  
11 cludes—

12 “(A) any person acting on behalf of the  
13 purchaser or assignee; and

14 “(B) with regard to credit obligations se-  
15 cured by consumers’ dwellings included in a  
16 pool for the purpose of issuing asset-backed se-  
17 curities, the issuer of the asset-backed security,  
18 the depositor entity holding such pool, and any  
19 affiliate of such issuer or depository entity.”.

20 **SEC. 104. COORDINATION WITH STATE LAW.**

21 (a) IN GENERAL.—Section 111 of the Truth in Lend-  
22 ing Act (15 U.S.C. 1610) is amended—

23 (1) by adding at the end the following new sub-  
24 section:

25 “(f) HIGH-COST MORTGAGES.—

1           “(1) IN GENERAL.—To the extent that any law  
2       of any State—

3           “(A) imposes any requirement, limitation,  
4       or prohibition on any mortgage lending activi-  
5       ties in connection with an extension of con-  
6       sumer credit secured by a lien against a con-  
7       sumer’s dwelling in whole or in part because the  
8       actual or contingent costs and finance charges  
9       to the consumer associated with such extension  
10      of credit exceed any particular threshold for  
11      such costs, however such threshold may be de-  
12      fined; or

13          “(B) attempts to regulate such mortgage  
14      lending activities—

15           “(i) through limitations or prohibi-  
16          tions in connection with contracts for other  
17          business with any such State or political  
18          subdivision thereof;

19           “(ii) by making any conduct in con-  
20          nection with any such activities subject to  
21          criminal penalties; or

22           “(iii) by making activities regulated  
23          under real estate, foreclosure, or other  
24          laws of such State or political subdivision



1                   contingent upon the manner in which  
2                   mortgage lending activities are conducted,  
3           this title shall preempt such law, irrespective of  
4           whether such law affords greater protection, sub-  
5           stantive or otherwise, to consumers.

6                   “(2) DEFINITIONS.—For purposes of this sub-  
7           section, the following definitions shall apply:

8                   “(A) MORTGAGE LENDING ACTIVITIES.—

9           The term ‘mortgage lending activities’ includes  
10          any advertisement, solicitation, offer, negotia-  
11          tion, application, processing, underwriting, origi-  
12          nating, closing, funding, recording, assignment,  
13          securitization, servicing, collection, modification,  
14          satisfaction, or foreclosure (including the dis-  
15          position of foreclosed property) for or of any ex-  
16          tension of consumer credit secured by a lien  
17          against a consumer’s dwelling.

18                   “(B) LAW OF ANY STATE.—The term ‘law  
19          of any State’ includes any statute, rule, regula-  
20          tion, or ordinance of any State or any political  
21          subdivision of any State.

22                   “(3) CLARIFICATION OF PREEMPTION.—Laws  
23          preempted under paragraph (1) of this subsection  
24          shall, without in any way limiting the effect of para-  
25          graph (1) of this subsection, include—

1           “(A) any law of any State that directly or  
2 indirectly limits a creditor’s ability to extend  
3 new credit to a consumer for the purpose of re-  
4 financing an existing extension of consumer  
5 credit in whole or in part because the actual or  
6 contingent costs and finance charges to the con-  
7 sumer associated with either the existing or the  
8 new extension of consumer credit are lower  
9 than or in excess of any particular threshold; or

10           “(B) any law of any State that directly or  
11 indirectly limits the claims, defenses, or other  
12 remedies at law or equity available to a cred-  
13 itor, its agent, or its direct or indirect assignee  
14 in connection with an extension of consumer  
15 credit secured by a lien against a consumer’s  
16 dwelling in whole or in part because the actual  
17 or contingent costs and finance charges to the  
18 consumer associated with such extension of con-  
19 sumer credit are in excess of any particular  
20 threshold.

21           “(4) EXCLUSIONS.—Notwithstanding para-  
22 graphs (1) and (2), the following laws are expressly  
23 excluded from the preemption set forth in paragraph  
24 (1):

1           “(A) Any law of any State, not otherwise  
2 preempted under Federal law, limiting the rate  
3 of interest reflected in the note or other instru-  
4 ment evidencing an extension of consumer cred-  
5 it secured by a lien against a consumer’s dwell-  
6 ing, to the extent that such law does not re-  
7 quire compliance with any law that is otherwise  
8 preempted under paragraphs (1) and (2) as a  
9 condition of contracting for, charging, or col-  
10 lecting any rate of interest otherwise permitted  
11 by such law.

12           “(B) Any law of any State requiring the li-  
13 censing, registration, or authorization of any  
14 person engaged in mortgage lending activities,  
15 to the extent that such law does not condition  
16 the issuance of such a license, registration or  
17 other authorization, or the authority granted  
18 thereby, on compliance with any law that is oth-  
19 erwise preempted under paragraphs (1) and  
20 (2).

21           “(5) PROMPT DETERMINATION BY BOARD OF  
22 GOVERNORS.—

23           “(A) IN GENERAL.—In response to a re-  
24 quest from any person, the Board of Governors  
25 of the Federal Reserve System, or any official

1 or employee of the Board of Governors of the  
2 Federal Reserve System duly authorized by the  
3 Board, shall—

4 “(i) promptly determine whether the  
5 specific law of any State identified in such  
6 request is preempted by operation of this  
7 subsection; and

8 “(ii) cause such determination to be  
9 published in the Federal Register.

10 “(B) EFFECT OF PUBLICATION.—Any de-  
11 termination under subparagraph (A) that is  
12 published in the Federal Register shall have the  
13 force and effect of law as of the date of such  
14 publication.”;

15 (2) in subsection (a)(1), by striking the 1st sen-  
16 tence and inserting “Except as provided in sub-  
17 sections (e) and (f), no provision of chapter 1, 2 or  
18 3 shall be construed as annulling, altering, or affect-  
19 ing the laws of any State relating to the disclosure  
20 of information in connection with credit trans-  
21 actions, except to the extent that those laws are in-  
22 consistent with the provisions of this title, and then  
23 only to the extent of the inconsistency.”; and

1           (3) in subsection (b) by striking “section 129”  
 2           the 1st place such term appears and inserting “sub-  
 3           section (f) and section 129”; and

4           (4) in subsection (d), by striking “sections 125,  
 5           130, and 166” and inserting “subsection (f) and  
 6           sections 125, 130, and 166”.

7           (b) CLARIFICATION OF PRIMARY ENFORCEMENT AU-  
 8           THORITY WITH RESPECT TO STATE-CHARTERED ENTI-  
 9           TIES.—Section 108 of the Truth in Lending Act (15  
 10          U.S.C. 1607) is amended by adding at the end the fol-  
 11          lowing new subsection:

12          “(f) CLARIFICATION OF PRIMARY ENFORCEMENT  
 13          AUTHORITY WITH RESPECT TO STATE-CHARTERED EN-  
 14          TITIES.—In addition to the authority provided under sec-  
 15          tion 130(e), no provision of this title shall be construed  
 16          as affecting the authority of any State to enforce the laws  
 17          of such State, as the primary enforcement authority, with  
 18          regard to any person domiciled in such State or chartered  
 19          by such State.”.

20          **SEC. 105. CONTINUATION OF IDENTIFICATIONS UNDER THE**  
 21                                   **ALTERNATIVE MORTGAGE TRANSACTION**  
 22                                   **PARITY ACT OF 1982.**

23          The Director of the Office of Thrift Supervision shall  
 24          take no action under the Alternative Mortgage Trans-  
 25          action Parity Act of 1982 that would have the effect of

1 discontinuing the identification of regulations of the Direc-  
2 tor relating to late fees and prepayment penalties as appli-  
3 cable to State housing creditors and no regulation of the  
4 Director that was prescribed in final form before the en-  
5 actment of this Act and that would discontinue such iden-  
6 tification shall be effective on or after such date of enact-  
7 ment, unless permitted by a subsequent Act of the Con-  
8 gress.

9 **SEC. 106. EFFECTIVE DATE.**

10 (a) IN GENERAL.—This Act, and the amendments  
11 made by this Act, shall take effect at the end of the 1-  
12 year period beginning on the date of the enactment of this  
13 Act.

14 (b) SCOPE OF APPLICATION.—This Act, and the  
15 amendments made by this Act, shall apply with respect  
16 to applications for high-cost mortgages received on or  
17 after the effective date of this Act.

18 (c) VOLUNTARY COMPLIANCE.—No creditor or as-  
19 signee shall be subject to civil liability in any action  
20 brought under the Truth in Lending Act with respect to  
21 provisions of such Act that are amended by this Act, if  
22 the creditor or assignee voluntarily complies with the re-  
23 quirements of such amendments during the 1-year period  
24 referred to in subsection (a).

1 **TITLE II—CONSUMER MORT-**  
2 **GAGE PROTECTION BOARD**

3 **SEC. 201. ESTABLISHMENT.**

4 (a) IN GENERAL.—Section 106 of the Housing and  
5 Urban Development Act of 1968 (12 U.S.C. 1701x) is  
6 amended by adding at the end the following new sub-  
7 section:

8 “(g) CONSUMER MORTGAGE PROTECTION BOARD.—

9 “(1) ESTABLISHMENT.—There is established in  
10 the Department of Housing and Urban Development  
11 the Consumer Mortgage Protection Board (in this  
12 section referred to as the ‘Board’).

13 “(2) FUNCTIONS.—The Board shall carry out  
14 the functions assigned to the Board under this sec-  
15 tion and any other provisions of law. Such functions  
16 shall include establishing rules necessary—

17 “(A) for the counseling procedures under  
18 subsection (h)(1);

19 “(B) under section 5 of the Real Estate  
20 Settlement Procedures Act of 1974 (12 U.S.C.  
21 2604) for mortgage information booklets pre-  
22 pared pursuant to such section;

23 “(C) for the operation and administration  
24 of the Board; and

1           “(D) for the establishment and mainte-  
2           nance of the national database of mortgage bro-  
3           kers under subtitle B of title II of the Respon-  
4           sible Lending Act.

5           “(3) MEMBERS.—The Board shall be composed  
6           of 15 members, who shall be appointed by the Sec-  
7           retary, as follows:

8           “(A) 4 members shall be individuals who  
9           represent consumers of settlement services.

10          “(B) 3 members shall be individuals who  
11          represent originators of federally related mort-  
12          gage loans (as such term is defined in section  
13          3 of the Real Estate Settlement Procedures Act  
14          of 1974 (12 U.S.C. 2602), including at least 2  
15          individuals who are associated with lenders that  
16          fund and close loans with their own funds and  
17          are capable of servicing such loans.

18          “(C) 1 member shall be an individual who  
19          represents real estate sales professionals.

20          “(D) 1 member shall be an individual who  
21          represents real estate appraisers.

22          “(E) 1 member shall be an individual who  
23          represents private mortgage insurers.

24          “(F) 1 member shall be an individual who  
25          represents title insurance providers.



1           “(G) 1 member shall be an individual who  
2           represents settlement service management com-  
3           panies.

4           “(H) 1 member shall be an individual who  
5           represents providers of electronic delivery mech-  
6           anisms that facilitate home purchases and home  
7           financings.

8           “(I) 1 member shall be an individual who  
9           is a practicing attorney specializing in residen-  
10          tial mortgage finance or settlement services.

11          “(J) 1 member shall be an individual who  
12          represents mortgage brokers (as such term is  
13          defined in section 303 of the Responsible Lend-  
14          ing Act).

15          “(4) TERMS AND VACANCIES.—Each member of  
16          the Board shall be appointed for a term of three  
17          years. Any member appointed to fill a vacancy oc-  
18          curring before the expiration of the term for which  
19          the member’s predecessor was appointed shall be ap-  
20          pointed only for the remainder of that term. A mem-  
21          ber may serve after the expiration of that member’s  
22          term until a successor has taken office. A vacancy  
23          in the Board shall be filled in the manner in which  
24          the original appointment was made.

1           “(5) SERVICE WITHOUT PAY; TRAVEL EX-  
2           PENSES.—Members of the Board shall serve without  
3           pay, but each member of the Board shall receive  
4           travel expenses, including per diem in lieu of subsist-  
5           ence, in accordance with applicable provisions under  
6           subchapter I of chapter 57 of title 5, United States  
7           Code.

8           “(6) STAFF.—Subject to the rules prescribed by  
9           the Board, the Board may appoint and fix the pay  
10          of personnel as the Board considers appropriate to  
11          carry out the Board’s functions. Such personnel may  
12          be appointed without regard to the provisions of title  
13          5, United States Code, governing appointments in  
14          the competitive service, and may be paid without re-  
15          gard to the provisions of chapter 51 and subchapter  
16          III of chapter 53 of that title relating to classifica-  
17          tion and General Schedule pay rates. The Board  
18          may provide reasonable additional compensation and  
19          benefits to employees of the Board if the same type  
20          of compensation or benefits are then being provided  
21          by any Federal bank regulatory agency or, if not  
22          then being provided, could be provided by such an  
23          agency under applicable provisions of law, rule, or  
24          regulation.

1           “(7) EXEMPTION FROM FEDERAL ADVISORY  
2           COMMITTEE ACT PROVISIONS.—The provisions of the  
3           Federal Advisory Committee Act (5 U.S.C. App.)  
4           shall not apply to the Board.”.

5           (b) INITIAL APPOINTMENTS.—The Secretary of  
6           Housing and Urban Development shall appoint the initial  
7           members of the Consumer Mortgage Protection Board,  
8           pursuant to section 106(g) of the Housing and Urban De-  
9           velopment Act of 1968 (12 U.S.C. 1701x(g)), not later  
10          than 20 days after the date of the enactment of this Act.

11   **SEC. 202. COUNSELING PROCEDURES.**

12          (a) IN GENERAL.—Section 106 of the Housing and  
13          Urban Development Act of 1968 (12 U.S.C. 1701x), as  
14          amended by the preceding provisions of this Act, is further  
15          amended by adding at the end the following new sub-  
16          section:

17          “(h) BOARD RESPONSIBILITIES.—

18                  “(1) COUNSELING PROCEDURES.—

19                          “(A) IN GENERAL.—Subject to the ap-  
20                          proval of the Secretary, the Board shall estab-  
21                          lish, coordinate, and monitor the administration  
22                          by the Department of Housing and Urban De-  
23                          velopment of the counseling procedures for  
24                          homeownership counseling and rental housing  
25                          counseling provided in connection with any pro-

gram of the Department, including all requirements, standards, and performance measures that relate to homeownership counseling.

“(B) HOMEOWNERSHIP COUNSELING.—  
For purposes of this subsection, the term ‘homeownership counseling’ means counseling related to homeownership and residential mortgage loans, and includes counseling related to such topics that is provided pursuant to—

“(i) section 105(a)(20) of the Housing and Community Development Act of 1974 (42 U.S.C. 42 5305(a)(20));

“(ii) in the United States Housing Act of 1937—

“(I) section 9(e) (42 U.S.C. 1437g(e));

“(II) section 8(y)(1)(D) (42 U.S.C. 1437f(y)(1)(D));

“(III) section 23(c)(4) (42 U.S.C. 1437u(c)(4));

“(IV) sections 302(b)(6) and 303(b)(7) (42 U.S.C. 1437aaa–1(b)(6), 1437aaa–2(b)(7)); and

“(V) section 304(c)(4) (42 U.S.C. 1437aaa–3(c)(4)).

1 “(iii) section 302(a)(4) of the Amer-  
2 ican Homeownership and Economic Oppor-  
3 tunity Act of 2000 (42 U.S.C. 1437f note);

4 “(iv) sections 233(b)(2) and 258(b) of  
5 the Cranston-Gonzalez National Affordable  
6 Housing Act (42 U.S.C. 12773(b)(2),  
7 12808(b));

8 “(v) sections 101(e) and 106 of the  
9 Housing and Urban Development Act of  
10 1968 (12 U.S.C. 1701w(e), 1701x);

11 “(vi) section 220(d)(2)(G) of the Low-  
12 Income Housing Preservation and Resident  
13 Homeownership Act of 1990 (12 U.S.C.  
14 4110(d)(2)(G));

15 “(vii) sections 422(b)(6), 423(b)(7),  
16 424(c)(4), 442(b)(6), and 443(b)(6) of the  
17 Cranston-Gonzalez National Affordable  
18 Housing Act (42 U.S.C. 12872(b)(6),  
19 12873(b)(7), 12874(c)(4), 12892(b)(6),  
20 and 12893(b)(6));

21 “(viii) section 491(b)(1)(F)(iii) of the  
22 McKinney-Vento Homeless Assistance Act  
23 (42 U.S.C. 11408(b)(1)(F)(iii));

24 “(ix) sections 202(3) and  
25 810(b)(2)(A) of the Native American

Housing and Self-Determination Act of  
1996 (25 U.S.C. 4132(3), 4229(b)(2)(A));

“(x) in the National Housing Act—

“(I) in section 203 (12 U.S.C.  
1709), the penultimate undesignated  
paragraph of paragraph (2) of sub-  
section (b), subsection (c)(2)(A), and  
subsection (r)(4);

“(II) subsections (a) and (c)(3)  
of section 237 (12 U.S.C. 1715z–2);  
and

“(III) subsections (d)(2)(B) and  
(m)(1) of section 255 (12 U.S.C.  
1715z–20);

“(xi) section 502(h)(4)(B) of the  
Housing Act of 1949 (42 U.S.C.  
1472(h)(4)(B)); and

“(xii) section 508 of the Housing and  
Urban Development Act of 1970 (12  
U.S.C. 1701z–7).

“(C) RENTAL HOUSING COUNSELING.—

For purposes of this subsection, the term ‘rent-  
al housing counseling’ means counseling related  
to rental of residential property, and includes

1 counseling related to such topics that is pro-  
2 vided pursuant to—

3 “(i) section 105(a)(20) of the Housing  
4 and Community Development Act of 1974  
5 (42 U.S.C. 42 5305(a)(20));

6 “(ii) in the United States Housing  
7 Act of 1937—

8 “(I) section 9(e) (42 U.S.C.  
9 1437g(e));

10 “(II) section 18(a)(4)(D) (42  
11 U.S.C. 1437p(a)(4)(D));

12 “(III) section 23(c)(4) (42  
13 U.S.C. 1437u(c)(4));

14 “(IV) section 32(e)(4) (42 U.S.C.  
15 1437z-4(e)(4));

16 “(V) section 33(d)(2)(B) (42  
17 U.S.C. 1437z-5(d)(2)(B)); and

18 “(VI) section 302(b)(6) (42  
19 U.S.C. 1437aaa-1(b)(6));

20 “(iii) section 233(b)(2) of the Cran-  
21 ston-Gonzalez National Affordable Housing  
22 Act (42 U.S.C. 12773(b)(2));

23 “(iv) section 106 of the Housing and  
24 Urban Development Act of 1968 (12  
25 U.S.C. 1701x);

1 “(vii) section 422(b)(6) of the Cran-  
 2 ston-Gonzalez National Affordable Housing  
 3 Act (42 U.S.C. 12872(b)(6));

4 “(viii) section 491(b)(1)(F)(iii) of the  
 5 McKinney-Vento Homeless Assistance Act  
 6 (42 U.S.C. 11408(b)(1)(F)(iii)); and

7 “(ix) sections 202(3) and  
 8 810(b)(2)(A) of the Native American  
 9 Housing and Self-Determination Act of  
 10 1996 (25 U.S.C. 4132(3), 4229(b)(2)(A)).

11 “(2) TOLL-FREE TELEPHONE NUMBER AND  
 12 WEB SITE.—The Board shall establish and operate  
 13 a toll-free telephone number and a World Wide Web  
 14 site through which persons interested in homeowner-  
 15 ship counseling services may locate and obtain  
 16 names and contact information of persons and orga-  
 17 nizations certified under section 106(e) of the Hous-  
 18 ing and Urban Development Act of 1968 to provide  
 19 such services.

20 “(3) UNIFORM MATERIALS.—The Board shall  
 21 ensure the uniformity of materials and forms to be  
 22 used, as appropriate, by organizations providing  
 23 homeownership counseling services, including any re-  
 24 cipients of assistance pursuant to subsection (a)(4).

25 “(4) MORTGAGE SOFTWARE SYSTEMS.—



1           “(A) CERTIFICATION.—The Board shall  
2           provide for the certification of various computer  
3           software programs for consumers to use in eval-  
4           uating different residential mortgage loan pro-  
5           posals. The Board shall require, for such certifi-  
6           cation, that the mortgage software systems that  
7           take into account—

8                   “(i) the consumer’s financial situa-  
9                   tion;

10                   “(ii) the amount of time the consumer  
11                   expects to remain in the home or expected  
12                   time to maturity of the loan;

13                   “(iii) such other factors as the Board  
14                   considers appropriate to assist the con-  
15                   sumer in evaluating whether to pay points,  
16                   to lock in an interest rate, to select an ad-  
17                   justable or fixed rate loan, to select a con-  
18                   ventional or government-insured or guar-  
19                   anteed loan and to make other choices dur-  
20                   ing the loan application process.

21           If the Board determines that available existing  
22           software is inadequate to assist consumers dur-  
23           ing the residential mortgage loan application  
24           process, the Board shall arrange for the devel-  
25           opment by private sector software companies of

1 new mortgage software systems that meet the  
2 Board's specifications.

3 “(B) AVAILABILITY.—The Board shall  
4 take reasonable steps to make mortgage soft-  
5 ware systems certified pursuant to this para-  
6 graph widely available through the Internet and  
7 at public locations, including public libraries,  
8 senior-citizen centers, and homeownership coun-  
9 seling centers.

10 “(5) OUTREACH TO VULNERABLE POPU-  
11 LATIONS.—The Board shall develop a media pro-  
12 gram designed to make elderly persons, illiterate  
13 persons, low-income persons, and other potentially  
14 vulnerable consumers aware that it is advisable, be-  
15 fore seeking a residential mortgage loan, to obtain  
16 homeownership counseling from an unbiased and re-  
17 liable source and that such homeownership coun-  
18 seling is available, including through programs of  
19 the Department of Housing and Urban Develop-  
20 ment.”.

21 (b) CONFORMING AMENDMENTS TO GRANT PRO-  
22 GRAM FOR HOMEOWNERSHIP COUNSELING ORGANIZA-  
23 TIONS.—Section 106(c)(5)(A)(ii) of the Housing and  
24 Urban Development Act of 1968 (12 U.S.C.  
25 1701x(c)(5)(A)(ii)) is amended—

1 (1) in subclause (II), by striking “and” at the  
2 end;

3 (2) in subclause (III) by striking the period at  
4 the end and inserting “; and”; and

5 (3) by inserting after subclause (III) the fol-  
6 lowing new subclause:

7 “(IV) notify the homeowner or  
8 mortgage applicant of the availability  
9 of mortgage software systems pro-  
10 vided pursuant to subsection (h)(4).”.

11 **SEC. 203. GRANTS FOR HOUSING COUNSELING ASSIST-**  
12 **ANCE.**

13 (a) AUTHORIZATION OF APPROPRIATIONS.—Section  
14 106(a) of the Housing and Urban Development Act of  
15 1968 (12 U.S.C. 1701x(a)(3)) is amended by adding at  
16 the end the following new paragraph:

17 “(4) HOMEOWNERSHIP COUNSELING ASSISTANCE.—

18 “(A) IN GENERAL.—The Secretary shall,  
19 through the Consumer Mortgage Protection Board  
20 established under subsection (g), make financial as-  
21 sistance available under this paragraph to entities  
22 providing homeownership counseling (as such term  
23 is defined in subsection (h)(1)(B)).

24 “(B) QUALIFIED ENTITIES.—The Consumer  
25 Mortgage Protection Board shall establish standards

1 and guidelines for eligibility of organizations (includ-  
 2 ing governmental and nonprofit organizations) to re-  
 3 ceive assistance under this paragraph.

4 “(C) DISTRIBUTION.—Assistance made avail-  
 5 able under this paragraph shall be distributed in a  
 6 manner that encourages efficient and successful  
 7 counseling programs.

8 “(D) AUTHORIZATION OF APPROPRIATIONS.—  
 9 There are authorized to be appropriated, to the Con-  
 10 sumer Mortgage Protection Board established under  
 11 subsection (g), \$50,000,000 for each of fiscal years  
 12 2003 through 2007 for—

13 “(i) the operations of the Board; and

14 “(ii) assistance under this paragraph  
 15 (1)(iii) for entities providing homeownership  
 16 counseling.”.

17 **SEC. 204. REQUIREMENTS TO USE HUD-CERTIFIED COUN-**  
 18 **SELORS UNDER HUD PROGRAMS.**

19 (a) BOARD RESPONSIBILITY.—Section 106(e) of the  
 20 Housing and Urban Development Act of 1968 (12 U.S.C.  
 21 1701x(e)) is amended—

22 (1) in paragraph (1), by striking “Secretary”  
 23 and inserting “Consumer Mortgage Protection  
 24 Board established under subsection (g)”; and

1           (2) in paragraphs (2) and (3), by striking “Sec-  
 2       retary” each place such term appears and inserting  
 3       “Board”.

4       (b) REQUIREMENT TO USE CERTIFIED COUN-  
 5       SELORS.—Section 106(e) of the Housing and Urban De-  
 6       velopment Act of 1968 (12 U.S.C. 1701x(e)) is amend-  
 7       ed—

8           (1) in paragraph (1)—

9               (A) by inserting “(a)(4),” after “(a)(2),”;

10              (B) by inserting “of this section, or under  
 11       section 101(e)” after “or (d)”; and

12              (C) by striking “, to the extent prac-  
 13       ticable,” and inserting “only”;

14           (2) by redesignating paragraph (3) as para-  
 15       graph (4); and

16           (3) by inserting after paragraph (2) the fol-  
 17       lowing new paragraph:

18           “(3) REQUIREMENT UNDER HUD PROGRAMS.—

19       Any homeownership counseling or rental housing  
 20       counseling (as such terms are defined in subsection  
 21       (h)(1)) required under, or provided in connection  
 22       with, any program administered by the Department  
 23       of Housing and Urban Development shall be pro-  
 24       vided only by counselors certified by the Board

1 under this subsection as competent to provide such  
2 counseling.”.

3 **SEC. 205. UPDATING AND SIMPLIFICATION OF MORTGAGE**  
4 **INFORMATION BOOKLET.**

5 Section 5 of the Real Estate Settlement Procedures  
6 Act of 1974 (12 U.S.C. 2604) is amended—

7 (1) in the section heading, by striking “SPE-  
8 CIAL” and inserting “MORTGAGE”;

9 (2) by striking subsections (a) and (b) and in-  
10 serting the following new subsections:

11 “(a) PREPARATION AND DISTRIBUTION.—Subject to  
12 the approval of the Secretary, the Consumer Mortgage  
13 Protection Board established under section 106(g) of the  
14 Housing and Urban Development Act of 1968 (12 U.S.C.  
15 1701x(g)) (in this section referred to as the ‘Board’) shall  
16 prepare a booklet to help consumers applying for federally  
17 related mortgage loans to understand the nature and costs  
18 of real estate settlement services. The Secretary shall dis-  
19 tribute such booklets to all lenders that make federally re-  
20 lated mortgage loans.

21 “(b) CONTENTS.—Each booklet shall be in such form  
22 and detail as the Board shall prescribe and, in addition  
23 to such other information as the Board may provide, shall  
24 include in plain and understandable language the following  
25 information:

1           “(1) A description and explanation of the na-  
2           ture and purpose of the costs incident to a real es-  
3           tate settlement or a federally related mortgage loan.  
4           The description and explanation shall provide gen-  
5           eral information about the mortgage process as well  
6           as specific information concerning, at a minimum—

7                   “(A) balloon payments;

8                   “(B) prepayment penalties; and

9                   “(C) the tradeoff between closing costs and  
10           the interest rate over the life of the loan.

11           “(2) An explanation and sample of the uniform  
12           settlement statement required by section 4.

13           “(3) A list and explanation of common unfair,  
14           deceptive, or fraudulent lending practices, including  
15           those prohibited by the Truth in Lending Act or  
16           other applicable Federal law, and of other unfair  
17           practices and unreasonable or unnecessary charges  
18           to be avoided by the prospective buyer with respect  
19           to a real estate settlement.

20           “(4) A list and explanation of questions a con-  
21           sumer obtaining a federally related mortgage loan  
22           should ask regarding the loan, including whether the  
23           consumer will have the ability to repay the loan,  
24           whether the consumer sufficiently shopped for the  
25           loan, whether the loan terms include prepayment

1 penalties or balloon payments, and whether the loan  
2 will benefit the borrower.

3 “(5) An explanation of the right of rescission as  
4 to certain transactions provided by sections 125 and  
5 129 of the Truth in Lending Act (15 U.S.C. 1635,  
6 1639).

7 “(6) A brief explanation of the nature of a vari-  
8 able rate mortgage and a reference to the booklet  
9 entitled “Consumer Handbook on Adjustable Rate  
10 Mortgages”, published by the Board of Governors of  
11 the Federal Reserve System pursuant to section  
12 226.19(b)(1) of title 12, Code of Federal Regula-  
13 tions, or to any suitable substitute of such booklet  
14 that such Board of Governors may subsequently  
15 adopt pursuant to such section.

16 “(7) A brief explanation of the nature of a  
17 home equity line of credit and a reference to the  
18 pamphlet required to be provided under section  
19 127A of the Truth in Lending Act (15 U.S.C.  
20 1637a(e)).

21 “(8) Information about homeownership coun-  
22 seling services made available pursuant to section  
23 106(a)(4) of the Housing and Urban Development  
24 Act of 1968 (12 U.S.C. 1701x(a)(4)) and a rec-  
25 ommendation that the consumer use such services.



1           “(9) An explanation of the nature and purpose  
2           of escrow accounts when used in connection with  
3           loans secured by residential real estate and the re-  
4           quirements under section 10 of this Act regarding  
5           such accounts.

6           “(10) An explanation of the choices available to  
7           buyers of residential real estate in selecting persons  
8           to provide necessary services incident to a real estate  
9           settlement;.

10           “(11) An explanation of a consumer’s respon-  
11           sibilities, liabilities, and obligations in a mortgage  
12           transaction.

13           “(12) An explanation of the nature and purpose  
14           of real estate appraisals, including the difference be-  
15           tween an appraisal and a home inspection.

16           The booklet prepared pursuant to this section shall take  
17           into consideration differences in real estate settlement pro-  
18           cedures which may exist among the several States and ter-  
19           ritories of the United States and among separate political  
20           subdivisions within the same State and territory.”;

21           (3) in subsection (c), by striking the last sen-  
22           tence; and

23           (4) in subsection (e), by striking “Secretary”  
24           and inserting “Board”.

1   **TITLE III—REQUIREMENTS FOR**  
2           **MORTGAGE BROKERS**  
3           **Subtitle A—Licensing and**  
4           **Minimum Standards**

5   **SEC. 301. STATE REGULATION OF MORTGAGE BROKERS.**

6           (a) IN GENERAL.—The Federal mortgage broker re-  
7   quirements established pursuant to this title shall apply  
8   only with respect to States that, upon the expiration of  
9   the 3-year period beginning on the date of the enactment  
10  of this Act, have not enacted and do not have in effect  
11  uniform laws and regulations described in subsection (b).

12          (b) UNIFORM STATE LAWS.—

13               (1) IN GENERAL.—Laws and regulations de-  
14   scribed in this subsection are laws and regulations  
15   that—

16                       (A) require licensing for mortgage brokers;

17                       (B) require, as a condition of issuance of  
18   a license, that an applicant comply with pre-li-  
19   censing education requirements and submit a  
20   written application for a license, and that a  
21   criminal background check be performed on the  
22   applicant;

23                       (C) establish minimum testing standards  
24   for mortgage brokers;

1 (D) establish continuing education require-  
2 ments for mortgage brokers;

3 (E) require the public agency or official in  
4 the State that is responsible for licensing of  
5 mortgage brokers to provide, directly or other-  
6 wise to the national mortgage database estab-  
7 lished under subtitle B, such information as  
8 may be necessary to ensure that such database  
9 is effective for the purposes for which it is es-  
10 tablished; and

11 (F) comply with such standards regarding  
12 uniformity of information submitted to the na-  
13 tional database of mortgage brokers established  
14 under subtitle B as the Secretary of Housing  
15 and Urban Development considers necessary to  
16 facilitate the operation of the database.

17 (2) EXEMPTIONS.—For purposes of this sub-  
18 section, the term “mortgage broker” has the mean-  
19 ing provided in section 303(3), except that the laws  
20 and regulations of a State may exempt from treat-  
21 ment as mortgage brokers the following persons:

22 (A) Any bank, savings bank, savings and  
23 loan association, or credit union organized  
24 under the laws of a State or the United States,  
25 or a subsidiary or affiliate of a bank, savings

1 bank, savings and loan association, or credit  
2 union.

3 (B) Any budget or debt counseling service,  
4 as defined by the Secretary, that is a nonprofit  
5 organization exempt from taxation under sec-  
6 tion 501(c)(3) of the Internal Revenue Code of  
7 1986 (26 U.S.C. 501(c)(3));

8 (C) Any consumer reporting agency that is  
9 in substantial compliance with the Fair Credit  
10 Reporting Act (15 U.S.C. 1681 et seq.).

11 (D) Any political subdivision, or any gov-  
12 ernmental or other public entity, corporation, or  
13 agency, in or of the United States or any State.

14 (E) Any college or university, or entity  
15 that is controlled by a college or university, as  
16 determined by the Secretary.

17 (F) Any person who—

18 (i) makes, service, buys, or sells mort-  
19 gage loans;

20 (ii) underwrites the loans; and

21 (iii)(I) has been approved by the Sec-  
22 retary of Housing and Urban Development  
23 as a nonsupervised mortgagee with partici-  
24 pation in the direct endorsement program,

1 but not including a mortgagee approved as  
2 a loan correspondent;

3 (II) has been approved by the Federal  
4 National Mortgage Association as a seller/  
5 servicer;

6 (III) has been approved by the Fed-  
7 eral Home Loan Mortgage Corporation as  
8 a seller/servicer;

9 (IV) has been approved by the Sec-  
10 retary of Veterans Affairs as a nonsuper-  
11 vised automatic lender, but not including a  
12 person approved by the Secretary as a non-  
13 supervised lender, an agent of a nonsuper-  
14 vised automatic lender, or an agent of a  
15 nonsupervised lender; or

16 (V) is a creditor (as defined in section  
17 103(f) of the Truth in Lending Act) who  
18 makes or invests in residential real estate  
19 loans aggregating more than \$1,000,000  
20 per year, and irrespective of whether such  
21 creditor is licensed or supervised by an  
22 agency of a State.

23 (G) Any person created solely for the pur-  
24 pose of packaging and selling, as a unit of sale  
25 as investment securities, mortgage loans that

1           are secured by an interest in real estate, if the  
2           person does not service the loans.

3       (c) DETERMINATION.—

4           (1) HUD DETERMINATION.—At the end of the  
5       3-year period beginning on the date of the enact-  
6       ment of this Act, the Secretary of Housing and  
7       Urban Development shall determine, in consultation  
8       with the Board of Governors of the Federal Reserve  
9       System, whether the uniformity necessary to comply  
10      with subsection (a) has been achieved.

11          (2) JUDICIAL REVIEW.—The appropriate  
12      United States district court shall have exclusive ju-  
13      risdiction over any challenge to the determination  
14      pursuant to paragraph (1) and such court shall  
15      apply the standards set forth in section 706 of title  
16      5, United States Code, when reviewing any such  
17      challenge.

18      (d) CONTINUED APPLICATION.—If, at any time, the  
19      Secretary determines that a State no longer has in effect  
20      laws and regulations described in subsection (a) or the  
21      uniformity necessary to comply with subsection (a) no  
22      longer exists with respect to a State, the Federal mortgage  
23      broker requirements shall take effect with respect to such  
24      State 2 years after the date on which such determination  
25      was made, unless the State has in effect such laws or regu-

1 lations, or the uniformity necessary to comply with sub-  
2 section (a) is satisfied, before the expiration of such 2-  
3 year period.

4 (e) MONITORING.—The Secretary shall monitor the  
5 laws and regulations of the States governing the matters  
6 referred to in subsection (a) for purposes of making deter-  
7 minations under subsection (d).

8 **SEC. 302. FEDERAL MORTGAGE BROKER REQUIREMENTS.**

9 (a) IN GENERAL.—Not later than 3 years after the  
10 date of the enactment of this Act, the Secretary of Hous-  
11 ing and Urban Development shall, by regulation and in  
12 consultation with the Board of Governors of the Federal  
13 Reserve System, establish Federal mortgage broker re-  
14 quirements under this section that meet the requirements  
15 set forth in subparagraphs (A) through (F) of section  
16 301(b)(1).

17 (b) RULEMAKING.—The regulations required under  
18 subsection (a) shall be issued after notice and opportunity  
19 for public comment pursuant to the provisions of section  
20 553 of title 5, United States Code (notwithstanding sub-  
21 sections (a)(2), (b)(B), and (d)(3) of such section).

22 **SEC. 303. DEFINITIONS.**

23 For purposes of this title, the following definitions  
24 shall apply:

1           (1) BUYER.—the term “buyer” means an indi-  
2           vidual who is solicited to purchase, or who pur-  
3           chases, the services of a mortgage broker for pur-  
4           poses other than obtaining a business loan.

5           (2) MORTGAGE.—The term “mortgage” means  
6           any indebtedness secured by a deed of trust, security  
7           deed, or other lien on real property.

8           (3) MORTGAGE BROKER.—

9                   (A) IN GENERAL.—The term “mortgage  
10           broker” means a person that—

11                           (i) holds such person out as being able  
12                           to assist a buyer in obtaining a mortgage  
13                           and charges or receives, from the buyer or  
14                           lender for the mortgage, money or other  
15                           valuable consideration readily convertible  
16                           into money for providing such assistance;  
17                           or

18                           (ii) is engaged in table-funding mort-  
19                           gage loans that are first lien mortgage  
20                           loans.

21                   (B) SOLICITATION OF INFORMATION.—

22           Such term includes any person that solicits fi-  
23           nancial and mortgage information from the  
24           public, provides such information to a mortgage  
25           broker, as defined in subparagraph (A), and



1 charges or receives from the mortgage broker  
 2 money or other valuable consideration readily  
 3 convertible into money for providing the infor-  
 4 mation;

5 (C) EXCEPTIONS.—Such term does not in-  
 6 clude the persons referred to in subparagraphs  
 7 (A) through (H) of section 301(b)(2).

8 (4) SECRETARY.—The term “Secretary” means  
 9 the Secretary of Housing and Urban Development.

10 (5) TABLE-FUNDING MORTGAGE LOAN.—The  
 11 term “table-funding mortgage loan” means a mort-  
 12 gage loan transaction in which the mortgage is ini-  
 13 tially payable to the mortgage broker, the mortgage  
 14 broker does not use the mortgage broker’s own  
 15 funds to fund the transaction, and, by the terms of  
 16 the mortgage or other agreement, the mortgage is  
 17 simultaneously assigned to another person.

## 18 **Subtitle B—Database of Licensed** 19 **Mortgage Brokers**

### 20 **SEC. 311. ESTABLISHMENT.**

21 (a) IN GENERAL.—The Consumer Mortgage Protec-  
 22 tion Board established under section 106(g) of the Hous-  
 23 ing and Urban Development Act of 1968 (12 U.S.C.  
 24 1701x(g)) (in this subtitle referred to as the “Board”)

1 shall provide for the establishment and maintenance of a  
2 national database of mortgage brokers.

3 (b) ADMINISTRATION.—The Board may maintain  
4 and administrate the database established under this sub-  
5 title or may enter into a contract with a private regulatory  
6 organization to maintain and administrate the database.  
7 The Board shall consult with the American Association  
8 of Residential Mortgage Regulators, the Conference of  
9 State Bank Supervisors, and other appropriate organiza-  
10 tions in determining the information to be maintained in  
11 the database and, if the Board provides for any other or-  
12 ganization to maintain and administrate the database, in  
13 selecting such organization.

14 (c) COMPETITIVELY PROCURED CONTRACT.—The  
15 Secretary shall enter into any contract for administration  
16 of the database using competitive procedures (as such  
17 term is defined in section 4 of the Office of Federal Pro-  
18 curement Policy Act).

19 (d) PERFORMANCE REVIEW.—The Secretary—

20 (1) shall periodically review the performance of  
21 the Board, or such other organization, in serving as  
22 administrator of the database; and

23 (2) may replace any such other organization  
24 with another qualified organization, pursuant to  
25 competitive procedures if the Secretary determines

1 in writing that the organization serving as adminis-  
2 trator is not fulfilling the terms of the contract or  
3 upon the expiration of the contract.

4 **SEC. 312. DATABASE.**

5 The national database of mortgage brokers main-  
6 tained pursuant to this title shall—

7 (1) include a listing of each person licensed  
8 under State law or regulation or under Federal  
9 mortgage broker requirements under section 302 to  
10 act as a mortgage broker;

11 (2) make available to the public information re-  
12 garding complaints made, and final disciplinary and  
13 enforcement actions taken, against each licensed  
14 mortgage broker;

15 (3) make available to the Secretary of Housing  
16 and Urban Development and to each public agency  
17 or official in a State responsible for licensing or test-  
18 ing under the laws or regulations referred to in sec-  
19 tion 301(b) such information regarding mortgage  
20 brokers as the Board, by regulation, considers ap-  
21 propriate for the Secretary and such agencies and  
22 officials to carry out their functions regarding regu-  
23 lation, licensing, or testing of mortgage brokers, in-  
24 cluding information regarding employment history  
25 and criminal background of mortgage brokers;

1           (4) make available to persons employing or  
2           using the services of mortgage brokers such informa-  
3           tion regarding mortgage brokers as the Board, by  
4           regulation, considers appropriate; and

5           (5) provide for the maintenance of such other  
6           information as the Board considers appropriate.

7   **SEC. 313. FEES.**

8           The Board may provide for the national database of  
9           mortgage brokers to charge reasonable fees to cover costs  
10          of maintaining and providing access to information from  
11          the database.

12   **SEC. 314. CONFIDENTIALITY OF INFORMATION.**

13          (a) IN GENERAL.—

14               (1) DATABASE.—Except as otherwise provided  
15               in this section, any requirement under Federal or  
16               State law regarding the privacy or confidentiality of  
17               any information or material in the possession of the  
18               Board or any other organization serving as the ad-  
19               ministrator of the database, and any privilege aris-  
20               ing under Federal or State law (including the rules  
21               of any Federal or State court) with respect to such  
22               information or material, shall continue to apply to  
23               such information or material after the information  
24               or material has been disclosed to the database.

1           (2) NONAPPLICABILITY OF CERTAIN REQUIRE-  
2           MENTS.—Information or material that is subject to  
3           a privilege or confidentiality under any other para-  
4           graph of this subsection shall not be subject to—

5                   (A) disclosure under any Federal or State  
6           law governing the disclosure to the public of in-  
7           formation held by an officer or an agency of the  
8           Federal Government or the respective State; or

9                   (B) subpoena or discovery, or admission  
10          into evidence, in any private civil action or ad-  
11          ministrative process,

12          unless with respect to any privilege held by the  
13          Board with respect to such information or material,  
14          the participant waives, in whole or in part, in the  
15          discretion of the participant, such privilege.

16          (b) PREEMPTION OF STATE LAW.—Any State law,  
17          including any State open record law, relating to the disclo-  
18          sure of confidential supervisory information or any infor-  
19          mation or material described in subsection (a) that is in-  
20          consistent with subsection (a) shall be superseded by the  
21          requirements of such provision to the extent State law pro-  
22          vides less confidentiality or a weaker privilege.

23       **SEC. 315. LIABILITY PROVISIONS.**

24          (a) NO LIABILITY FOR GOOD FAITH DISCLO-  
25          SURES.—Any State official or agency, or employee thereof,

1 shall not be subject to any civil action or proceeding for  
2 monetary damages by reason of the good faith action or  
3 omission of any officer or employee, while acting within  
4 the scope of office or employment, relating to collecting,  
5 furnishing, or disseminating of information concerning  
6 persons who are mortgage brokers or are applying for li-  
7 censing as mortgage brokers, whether directly or through  
8 the national database established under this subtitle.

9 (b) CRIMINAL LIABILITY FOR INTENTIONAL UNLAW-  
10 FUL DISCLOSURES.—

11 (1) IN GENERAL.—It shall be unlawful to will-  
12 fully disclose to any person any information con-  
13 cerning any person who is a mortgage broker or is  
14 applying for licensing as a mortgage broker knowing  
15 the disclosure to be in violation of any provision of  
16 this title—

17 (A) requiring the confidentiality of such in-  
18 formation; or

19 (B) establishing a privilege from disclosure  
20 for such information that has not been waived  
21 by the Board and the person who is a mortgage  
22 broker or is applying for licensing as a mort-  
23 gage broker.

24 (2) PENALTY.—Notwithstanding section 3571  
25 of title 18, United States Code, any person who vio-

1       lates paragraph (1) shall be fined an amount not to  
2       exceed the greater of \$100,000 or the amount of the  
3       actual damages sustained by any person as a result  
4       of such violation, or imprisoned not more than 5  
5       years, or both.

6       (c) FULL, CONTINUED PROTECTION UNDER THE SO-  
7       CALLED “FEDERAL TORT CLAIMS ACT”.—No provision  
8       of this Act shall be construed as reducing or limiting any  
9       protection provided for any Federal agency, or any officer  
10      or employee of any Federal agency, under section 2679  
11      of title 28, United States Code.

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