

H.R. XXXX – Responsible Lending Act
Section-by-Section Analysis

Section 1. Short title

This section establishes the short title of the legislation as the *Responsible Lending Act*.

Section 2. Table of contents

This section provides a table of contents for the *Responsible Lending Act*.

Title I -- Higher-Cost Mortgages

Section 101. Short title

This section establishes the short name of this title of the bill as the *Mortgage Lending Improvements and Uniform National Standards Act*.

Section 102. Definitions relating to higher-cost mortgages

In general, the section makes several revisions to existing law to expand the scope of those consumer transactions constituting higher-cost mortgages that are subject to special protections.

Higher-cost mortgage defined

Subsection (a) expands the scope of the current definition of a higher-cost mortgage, which currently only includes closed-end loans made to refinance an existing mortgage, to include, for the first time, **home purchase loans** as well as **open-ended home equity lines of credit**. Refinancing arrangements continue to be covered, but reverse mortgages are specifically exempted.

The subsection further clarifies that the **annual percentage rate (APR) trigger** for higher-cost mortgages is **eight percentage points** over the comparable Treasury securities for first mortgages and **ten percentage points** for subordinate mortgages. In addition to the APR trigger, the subsection lowers the **points and fees trigger** for higher-cost mortgages from eight percent to **five percent** of the total loan amount if it exceeds \$40,000 and to **six percent** if it is \$40,000 or less.

Points and fees defined

Subsection (b) prescribes those items to be included in the definition of points and fees.

Such charges include all **finance charges** as defined, except interest and the time-price differential, and all **compensation paid directly to the mortgage broker** by or on behalf of the consumer (excluding borrower credits). They also include **certain fees** (except for escrow for future payments of taxes or insurance) unless: (1) the charge is *bona fide*, competitive, and reasonable; (2) the creditor receives no direct compensation; and (3) the charge is paid to a third party. The definition of points and fees is also expanded to cover **all prepayment fees or penalties incurred by the borrower if the loan refinances a previous loan currently held by the same creditor or its affiliate**.

Bona fide discount points and benchmark rate defined

Subsection (c) provides further definitions related to *bona fide* discount points and the benchmark rate. Changes in the prior subsection to the definition of points and fees allow the exclusion of not more than two *bona fide* loan discount points. This subsection defines such points as knowingly paid by the borrower for the express purpose of lowering a loan's interest rate, and reducing the interest rate applicable by a minimum of 25 basis points per *bona fide* discount point, so long as all other terms of the loan remain the same. This discount point exclusion would not apply to loans with interest rates more than four percentage points above comparable Treasury securities.

Section 103. Amendments to requirements for higher-cost mortgages

In order to significantly improve protections for consumers of higher-cost mortgages, this section makes numerous changes to current Federal law.

Prepayment penalties

Subsection (a) repeals the current prepayment penalty provision of the Home Ownership and Equity Protection Act (HOEPA). The current HOEPA provision applies only to higher-cost mortgages. However, in section 108 of the bill (see below), a new section on prepayment penalty limitations is added to the Truth in Lending Act (TILA). This new section applies to all consumer credit transactions secured by a dwelling and not just higher-cost mortgages.

Balloon payments

Subsection (b) expands the current HOEPA prohibition on balloon payments of less than five years for higher-cost mortgages to a total prohibition. It also provides exceptions for seasonal or irregular income and for bridge loans, and requires specific disclosures in such instances.

Negative amortization

Subsection (c) prohibits negative amortization on higher-cost mortgages, but provides an exception for periods of temporary forbearance allowed by the creditor.

Restrictions on financing of points or fees; disclosures required

Subsection (d) prohibits financing, directly or indirectly, of points and fees on higher-cost mortgages in excess of five percent of the total loan amount (or six percent of the total loan amount for loans of \$40,000 or less). If any portion of the points and fees of a higher-cost mortgage are financed, a new disclosure is required with a statement that such treatment of any such point, fee, or charge is not legally required.

Prohibition on evasions through structuring transactions or reciprocal arrangements

Subsection (e) prohibits the evasion of the legal requirements for higher-cost mortgages by entering into reciprocal arrangements, dividing any loan transaction into separate parts, or structuring or restructuring a loan as another form of loan. The subsection also provides for the definition of “reciprocal arrangement” and clarifies that if there are two contemporaneous credit transactions secured by the same property and the loan-to-value ratio of one is equal to or more than 80 percent, the points and fees payable on this transaction may not be attributed to the other transaction.

No encouragement of default or nonpayment on prior existing loan

Subsection (f) prohibits a creditor from recommending or encouraging default or nonpayment on an existing mortgage loan or other debt prior to and in connection with a higher-cost mortgage transaction.

Ability to repay

Subsection (g) deletes the current HOEPA limitation that a “pattern or practice” must be shown in order to establish a violation of the requirement that a creditor must consider a consumer’s ability to repay a higher-cost mortgage. The pattern-or-practice standard proved difficult to meet. In its place, the new standard requires a creditor to consider the consumer’s current and expected income, current obligations, and employment. One instance of the creditor’s failure to do so is sufficient to establish a violation of this provision.

A consumer’s **repayment ability is presumed if** (1) the **total monthly payments** on outstanding debt obligations, including the amounts owed under the higher-cost mortgage, do not exceed **50 percent** of the consumer’s **monthly gross income**, as verified by the credit application, the consumer’s financial statement, a credit report, or any other reasonable means; and (2) the consumer has **sufficient residual income**, in accordance with regulations issued by the Federal Reserve Board, **to pay essential monthly expenses** after paying the monthly mortgage payments and any additional debt.

If the repayment ability is based on fixed income from a public or private source, then the income verification shall include reasonable documentation of such fixed income, in addition to any statement by the consumer. The absence of any means of verification does not create a presumption of a violation. Additionally, balloon payments are not construed as payments for purposes of the ability to repay requirements. Income verification is also required in the case of

a borrower without earned income. A creditor may rely on a consumer's statement of income if the consumer provides a signed financial statement or other documentation showing his or her income and obligations before the extension of credit and the creditor has a reasonable basis for believing the income exists and will support the repayment of the loan.

Prohibition of single premium credit insurance

Subsection (h) adds a new section to TILA to prohibit the offering or selling of credit insurance or any analogous product on a single premium basis in any consumer credit transaction involving a higher-cost mortgage. It expressly applies the prohibition to debt-cancellation or suspension agreements. An exception to the prohibition allows credit insurance and analogous products to be sold if the premium is calculated and paid on a regular monthly basis. It also provides a broad definition of credit insurance that encompasses protection against death, illness, accident, disability, loss of property, and unemployment.

Limitations on refinancing

Subsection (i) expands TILA to **prohibit** a creditor from knowingly or intentionally engaging in the unfair act or practice of loan flipping, which is defined as **refinancing a home loan with a higher-cost mortgage during the 24-month period after the consummation of the existing home loan without a reasonable tangible benefit**. This new prohibition would replace the current one-year flipping prohibition on higher-cost mortgages contained in Federal Reserve Board regulations. In determining whether a reasonable tangible benefit exists, the creditor may consider the terms and conditions of both the new and refinanced loan, the borrower's known economic and noneconomic circumstances, the purpose of the loan, and the cost of the new loan.

This subsection also provides for a **presumption of a reasonable tangible benefit under specific** circumstances by carving out reasonable **safe harbors** for such transactions. The subsection further prohibits refinancing of a "special mortgage" with a higher-cost mortgage if the consumer would lose one or more of the benefits of the special mortgage, without written consent of the holder of the special mortgage and a certification from a qualified credit counselor that the consumer obtained credit counseling regarding the new loan. A special mortgage is one that is originated, subsidized, or guaranteed by or through a Federal, State, tribal or local government, government-sponsored enterprise, or nonprofit organization (other than a mutual bank, mutual savings association, or credit union) with an interest rate at least two percentage points below the market rate or non-standard payment terms beneficial to the consumer. This prohibition only applies if it is apparent on the face of the security instrument for the existing loan that it is a special mortgage.

Additionally, this subsection specifies that a **consumer may not recover the costs of the action and attorney's fees for violations of this new section of TILA if a court determines that the consumer rejected a reasonable offer of remedy**. This standard is intended to ensure that consumers are able to obtain restitution as quickly as possible for problems with their higher-cost mortgages, rather than subjecting themselves to extensive litigation.

Requirements relating to home improvement contracts

Subsection (j) modifies TILA's standards relating to home improvement contracts. Specifically, it **prohibits a creditor from using the proceeds of a higher-cost mortgage to make the final payment or payment in full to a home improvement contractor without an independent inspection of any home improvement project exceeding \$10,000**, and without proof that the contractor has fully performed the obligation. A completion certificate in compliance with State law, or if State law does not provide for or recognize such certificates, a signed statement from the consumer and home-improvement contractor that there has been full performance shall satisfy this requirement. The creditor must also provide certain disclosures to the consumer before making a final payment.

Additional specific disclosures

Subsection (k) adds four new disclosures to the existing HOEPA disclosures for higher-cost mortgages. The first new disclosure warns a borrower about the loan having a higher interest rate and higher monthly payments than a prime rate loan. The second disclosure informs a borrower that he or she may qualify for a prime loan if the borrower's credit score is in excess of 660 and encourages a borrower to shop around in such instances. The third warning counsels the borrower to pay attention to how long it will take to pay off this loan and how much it will cost. The fourth new disclosure advises a borrower that using a loan to pay off old debts and replace them with new ones may get the borrower into financial difficulties.

No call provision

Subsection (l) amends TILA to prohibit a call provision for higher-cost mortgages under which the indebtedness may be accelerated by the creditor, in the creditor's sole discretion. The prohibition does not apply if the repayment has been accelerated due to a default or pursuant to a due-on-sale provision, or other provision of the loan documents unrelated to the payment schedule. It additionally does not apply due to any action or omission by a consumer that adversely affects the creditor's security interest in the dwelling or any rights of the creditor in such security.

Modification and deferral fees prohibited

Subsection (m) creates a new section of TILA to **prohibit modification and deferral fees in excess of** the lesser of the amount of **one monthly loan payment or \$300** to modify, renew, extend, or amend a higher-cost mortgage. This provision does not apply to loans in default or at least 60 days delinquent and part of a workout process.

Increased interest rate upon default prohibited

Subsection (n) prohibits an increased interest rate upon default for higher-cost mortgages, but also adds an exception for changes in a variable interest rate based on an index, as long as such changes are not due to a default or a permissible acceleration by a creditor.

Prepayment of periodic payments from proceeds prohibited

Subsection (o) prohibits a higher-cost mortgage from including terms under which more than two scheduled payments of interest or principal may be paid in advance or otherwise deducted from the loan proceeds.

Payoff statements

Subsection (p) bars creditors from charging a fee on high-cost mortgages for obtaining the first two payoff requests in any continuous six-month period. After that, a fee must be reasonable. This subsection also allows for a processing fee for faxing or courier service delivering the payoff statement, but such a fee must be comparable to fees imposed for similar services provided to all other mortgage consumers. The provision further requires creditors to deliver a payoff statement within seven business days of receipt of a written request.

Credit reporting requirements

Subsection (q) amends TILA to require a creditor to furnish, on a monthly basis, to a nationwide credit reporting agency the complete payment history, favorable and unfavorable, of the obligor with respect to all higher-cost mortgages held or serviced by such creditor, successor, assignee, or servicer. Persons holding the transaction for less than 90 days are exempted from this requirement. Loan forbearances, workouts, dispute resolutions, or consumer complaint settlements are also exempted.

Steering prohibited

Based on existing California law, subsection (r) creates a new requirement under Federal law to forbid a creditor who originates a higher-cost mortgage from knowingly or intentionally steering a consumer into a loan product that is not based on the creditor's best credit grade for which the consumer would qualify under the creditor's then-current underwriting guidelines. It also prohibits a broker from steering a consumer to a less favorable product than a product offered by creditors with whom the broker regularly does business and for which a consumer qualifies based on his or her credit grade. The creditor must provide the consumer's credit score within three days of the receipt of a higher-cost mortgage loan application, or the making of a determination that the consumer only qualifies for a higher-cost mortgage, whichever comes later.

A creditor is presumed not to have violated this provision if (1) there is a reasonable basis to believe that the credit grade determined by the creditor's then-current underwriting guidelines and applied to the consumer was appropriate, based on the information available, including information provided by the consumer; or (2) the consumer voluntarily, on an informed basis, agreed to a loan with a higher rate than that for which the consumer would otherwise qualify.

A broker is presumed not to have violated this provision if (1) there is a reasonable basis to believe that the applied credit grade was appropriate, based on the information available, including information provided by the consumer; or (2) the consumer voluntarily, on an

informed basis, agreed to a loan with a higher rate than that for which the consumer would otherwise qualify.

If steering occurs by a creditor, the loan must be either rescinded or rewritten, and appropriate restitution made. This subsection further provides a penalty for a mortgage broker's steering in the amount of \$4,000, the consumer's actual financial damages, reasonable attorney's fees, and court costs.

Regulations for disclosures

Subsection (s) authorizes the Federal Reserve Board to amend the definition and determination of what constitutes a prime loan for purposes of the disclosure requirements.

Section 104. Amendments relating to dispute and error resolution

This section makes several changes to current law governing higher-cost mortgages related to dispute and error resolution. Significantly, the section prohibits mandatory arbitration agreements. It also enhances the ability of creditors to correct errors so that consumers encountering legitimate problems may receive appropriate restitution promptly.

Prohibition on arbitration requirements

Subsection (a) prohibits higher-cost mortgages from including terms requiring arbitration or any other nonjudicial procedure for resolving any controversy or claims. It allows a creditor and borrower to enter into voluntary post-controversy agreements after a dispute or claim arises that provide for arbitration or nonjudicial dispute resolution procedures. Such post-controversy agreements must require the arbitration to be held in the Federal judicial district or division where the property is located; comply with standards set by a nationally recognized arbitration organization; and require the creditor to pay all reasonable costs, including for witnesses and documents, during at least the first two days of the arbitration proceeding. No such voluntary arbitration could prevent the borrower from also later bringing action in an appropriate U.S. district court or any other court of competent jurisdiction.

Correction of errors

Subsection (b) adds a provision to TILA allowing a creditor or assignee who fails to comply with the law's requirements to avoid liability for such noncompliance if, within 45 days of the loan closing, they notify the consumer of the error and make appropriate restitution of any amounts collected in error and take appropriate actions to correct the error, including, if applicable, providing that the consumer does not have to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the APR actually disclosed, whichever is less.

Additionally, a creditor or assignee who fails to comply with the law's requirements may avoid liability for such noncompliance, if within 60 days of discovering the error, they notify the consumer, make appropriate restitution, and take appropriate action to correct the error. Unless they discovered the error through their own procedures, the creditor or assignee must also pay

the consumer a \$2,000 error penalty and reasonable attorney's fees, if any.

Appropriate restitution may include modifying the transaction's terms so that the loan is no longer a higher-cost mortgage. If the creditor or assignee fails to correct the error, the consumer may file an action or proceed with one already filed. Any document revisions would be deemed legally effective for all purposes as of the original date of the document that was revised.

Clarification relating to State-regulated transactions

Subsection (c) makes a technical clarification of Federal Reserve Board's existing authority to exempt State-regulated transactions from Federal law owing to the fact that section 106 of the bill (see below) establishes uniform national standards for higher-cost mortgages.

Section 105. Amendments to damages, rescission and liability provisions

This section makes a number of modifications to current law including increasing TILA's penalties for all transactions (regardless of whether they involve a higher-cost mortgage), coordinating class-action damages with actual damages for higher-cost mortgages, extending the statute of limitations for violations of higher-cost mortgage law, and modifying and improving existing assignee liability standards.

Increase in amount of civil money penalties for certain violations

Subsection (a) increases the maximum statutory TILA penalty amounts in individual cases from \$2,000 to \$4,000, and in class action cases from \$500,000 to \$1,000,000. The changes apply to all TILA-covered transactions, and not just higher-cost mortgages.

Coordination of class action damages with actual damages

Subsection (b) requires that the maximum amount of general damages imposed in a class action involving higher-cost mortgages must be reduced by the aggregate amount of actual damages payable to class members. It also requires the court, when determining the amount of liability, to consider the pattern and practices of the person giving rise to the violations, and whether such actions were willful.

Waiver of consumer right of rescission

Under subsection (c), a consumer's waiver of the right of rescission would be prohibited if it was required by the creditor as a condition of the transaction or the creditor advised or encouraged the consumer to waive such right.

Statute of limitations extended

Subsection (d) extends the amount of time for a consumer with a higher-cost mortgage to bring an action against a creditor or other party for violating the laws governing higher-cost

mortgages from one year to two years from the occurrence of the violation. The section is intended to address concerns that it takes consumers of higher-cost mortgages a longer time to identify problems given the complexities of such transactions.

Amendments relating to liability of assignees

Subsection (e) amends and improves the existing HOEPA standards related to the liability of assignees for higher-cost mortgages. Under the provision as amended, any purchaser or assignee would be subject to all claims and defenses that the consumer could assert against the creditor either (1) as a defense in a default action if the default was reasonably related to the violation, unless the consumer demonstrates that the purchaser or assignee had actual knowledge of or exhibited reckless indifference to the violation, in which case any defensive claim may be raised without regard to whether the violation related to the consumer's default; or (2) as an affirmative claim, unless the purchaser or assignee demonstrates by preponderance of evidence that a reasonable person exercising ordinary due diligence could not determine, based on the required loan documentation, the itemization of the amount financed, and other disclosure of disbursements, that a violation had occurred.

This subsection does not apply if the purchaser or assignee has exercised several specific due diligence tests. **First**, the purchaser or assignee must have **policies** in place expressly prohibiting the purchase or acceptance of assignment of higher-cost mortgages or such mortgages containing violations. **Second**, the purchaser or assignee must require by contract that a seller or assignor **represent and warrant** that they either would not sell or assign such mortgages or had such a representation or warranty from the previous seller or assignor. **Finally**, the purchaser or assignee must **exercise reasonable due diligence** at or before the purchase or assignment of the loans, or within a reasonable period thereafter, intended to prevent the purchase or assignment of such loans. Reasonable due diligence may be met by employing a **statistically significant sampling methodology**; a loan-by-loan review is not necessarily required.

Damages for violations are limited to the amount specified in section 130 of TILA, and for violations of other requirements to the amount of all remaining indebtedness and the total amount the consumer paid. In awarding damages, the court shall consider the amount of actual economic damages and the extent to which the noneconomic harm suffered should be compensable by general damages, as well as the lack of the purchaser's or assignee's knowledge of or participation in the facts or circumstances giving rise to the violations and claim and defenses. The court shall also consider the materiality of the violation and the relative harm to the consumer. **Damages** are limited to **actual financial losses and attorney's fees**, unless the consumer demonstrates that the purchaser or assignee had actual knowledge of or exhibited reckless indifference to a violation. Further clarification is added to indicate that purchasers and assignees do not include certain parties such as passive investors in securities based on a pool of mortgage loans.

Section 106. Coordination with State law

To establish uniform national standards to combat abusive, deceptive, and unfair lending

and to streamline mortgage lending practices, this section preempts any law of any State or political subdivision to the extent that such law attempts, directly or indirectly, to regulate mortgage lending activities by or through the imposition of a higher-cost limitation as well as under other defined circumstances. The section prescribes definitions to clarify the scope of the preemption. The section provides that the preemption would be self-executing, but the Federal Reserve Board is also required upon request to promptly publish in the *Federal Register* notice of whether and the extent to which it determines that the preemption applies.

Section 107. Clarification of State enforcement authority

The section clarifies that the provisions of this title do not affect a State's authority to act as the primary enforcement authority with regard to persons licensed in or entities chartered by such State. The *status quo* would be maintained with regard a State's ability to enforce Federal or State laws with respect to federally chartered depository institutions.

Section 108. Prepayment penalties and late charges

The section creates a new section under TILA to limit prepayment penalties and late charges for all consumer credit transactions, not just higher-cost mortgages, secured by a dwelling occupied as a principal residence. A penalty for the prepayment of a credit transaction could not be imposed due to debt acceleration from default or breach of loan terms and would be limited to a period of no more than 36 months after the consummation of the transaction.

Consumers accepting a mortgage with a prepayment penalty must first be offered a choice of another similar loan without a prepayment penalty, along with a description of the benefits the consumer will receive and the consequences the consumer may encounter from accepting the prepayment penalty. Prepayment penalties would also be limited, as under California law, to six months' interest on the amount prepaid in any twelve-month period in excess of 20 percent of the original principal amount.

The section further allows the imposition of late payments on all mortgage transactions only if they do not exceed five percent of the scheduled payment past due. They also may not be charged more than once with respect to a single late payment. In addition, late payments may only be assessed on a payment past due for fifteen days or more.

Section 109. Regulations

Notwithstanding any provision of existing law, this section requires the Federal Reserve Board to issue regulations implementing the changes made in this title within twelve months of enactment.

Section 110. Effective dates

The section provides that the amendments made by this title shall take effect at the end of the three-month period beginning on the date of the enactment and shall apply with respect to applications received on or after the *Responsible Lending Act's* effective date.

Title II -- Housing Counseling

Subtitle A -- Consumer Counseling

Section 201. Consumer counseling requirements

This section amends TILA to require a creditor to provide before loan consummation, as specified by rules and regulations issued by the Federal Reserve Board, a written statement recommending that a consumer take advantage of counseling before agreeing to the terms of any higher-cost mortgage. Creditors must also provide a list containing the names, addresses, and phone numbers of HUD- or State-approved counselors to higher-cost mortgage consumers.

Subtitle B -- Expanded Housing Counseling Opportunities

Section 211. Short title

This section designates subtitle B of title II as the *Expanding Housing Opportunities Through Education and Counseling Act*.

Section 212. Establishment of Office of Housing Counseling

This section amends the Department of Housing and Urban Development Act to create a new Office of Housing Counseling within the Office of the Secretary of Housing and Urban Development (HUD). The office will be headed by a Director in a Senior Executive Service career-reserved position and appointed by the HUD Secretary. The section requires the Director to oversee all homeownership and rental housing counseling programs for the Department, including research, grant administration, public outreach, and policy development related to housing counseling. The Director must also establish, coordinate and administer all regulations, requirements, standards, and performance measures under the program that relate to housing counseling, homeownership counseling, and rental housing counseling.

The section further requires the new housing counseling office to establish rules for counseling procedures, set up a toll-free number, prepare mortgage information booklets, carry out the certification of counseling service providers, offer assistance in the provision of counseling services, perform functions the Secretary deems appropriate with regard to abusive, deceptive or unscrupulous lending practices in the home mortgage business, and collaborate with community-based organizations with expertise in the field of housing counseling. The section additionally requires the office to cover the entire cycle of homeownership, including refinancing and foreclosure, in carrying out its housing counseling activities.

The section further establishes a housing counseling advisory committee and requires the office to provide assistance in the panel's operations and activities. The advisory committee consists of no more than twelve individuals representing all aspects of the mortgage and real estate industry, including consumers. Members appointed by the Secretary would serve three-

year terms, except that four would be initially appointed for a term of one year and four would be appointed for a term of two years. The HUD Secretary could reappoint members. Members would serve without pay, but would receive travel expenses. Further, the advisory committee would have no role in reviewing or awarding housing counseling grants.

Section 213. Counseling procedures

This section requires the HUD Secretary to coordinate all counseling procedures, including requirements, standards, and performance measures that relate to homeownership and rental housing counseling. The section also defines homeownership counseling and rental housing counseling. This section additionally mandates the establishment, operation, and publication of a toll-free telephone number and web site containing information on the availability of counseling services. The HUD Secretary is further required to establish standards to ensure uniformity of materials and forms used by counseling service providers.

The section also requires the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals. Certified software programs would be used to supplement, not replace, housing counseling, and the software programs initially would be used only in connection with the assistance of certified housing counselors. If necessary, the Secretary shall arrange for private sector firms to develop appropriate software meeting HUD's specifications.

In addition, the section requires the development of an outreach program to vulnerable populations concerning the existence of homeownership counseling. The section further requires the provision of advice and technical assistance to the States, local governments, and nonprofit organizations regarding educational and counseling services.

Section 214. Grants for housing counseling assistance

To improve access to housing counseling, this section authorizes HUD to make financial assistance available for housing counseling to the States, localities, and nonprofit organizations. HUD must establish standards and guidelines for assistance eligibility and distribute grants in a manner that encourages efficient and successful counseling programs. This section also authorizes appropriations of \$75 million for each of fiscal years 2006 through 2009 for the operations of the housing counseling office, HUD's housing counseling responsibilities, and authorized housing counseling grants.

Section 215. Requirements to use HUD-certified counselors under HUD programs

This section requires any homeownership or rental housing counseling administered by HUD must be provided solely by organizations or counselors certified by the Secretary.

Section 216. Study of defaults and foreclosures

To identify the root causes of default on and foreclosure of home loans, this section requires HUD to examine, using as much empirical data as are available, these matters. These

studies will also review the role of escrow accounts in helping borrowers to avoid defaults and foreclosures.

A preliminary study must be completed not later than twelve months after enactment and a final report is due within two years of enactment. The latter report will include any recommended legislation relating to the study, and to prevent defaults and foreclosures recommendations for best practices and for a process to identify populations that need counseling the most.

Section 217. Definitions for counseling-related programs

This section provides definitions for the purposes of the *Expanding Housing Opportunities Through Education and Counseling Act*, including nonprofit organization, State, and unit of general local government.

Section 218. Updating and simplification of mortgage information booklet

This section generally modernizes and improves the requirements under the Real Estate Settlement Procedures Act (RESPA) for HUD to prepare a booklet to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services. The booklet must be updated at least once every five years and be supplied in various languages and cultural styles. The section also prescribes specific topics to include in the information booklet, which must be written in plain and understandable language.

Topics for inclusion in the informational booklet are a description and explanation of the nature and purpose of a real estate settlement; incidental costs; the uniform settlement statement; common unfair, deceptive, or fraudulent lending practices; questions that the consumer should ask about a loan; the right to cancel the contract; variable rate mortgages; home equity lines of credit; the availability and value of homeownership counseling services; escrow accounts; choosing people for incidental services; the buyer's responsibilities, liabilities, and obligations in a mortgage transaction; and appraisals. The booklet must also take into consideration variances in real estate settlement procedures in different political jurisdictions. The section further requires the Secretary to distribute the booklet, along with lists of certified counselors, to lenders.

Section 219. Option for notice of foreclosure prevention counseling availability

To help consumers obtain housing counseling assistance in the event of a delinquency, the section creates an opt-in notice in connection with any federally related mortgage loan for borrowers. Specifically, the lender would provide the borrower, at the time of the consummation of the mortgage, an optional written agreement that, if signed by the borrower, allows the lender to provide notice to a housing counseling agency after a loan becomes delinquent for 60 days. Counseling entities receiving such notices would notify the borrower of the delinquency at the earliest time practicable, inform the borrower that foreclosure-prevention assistance may help in resolving the delinquency, and explain how to contact the entity to arrange such counseling.

This section also provides for an ability to cure a failure to provide the optional written

agreement, for penalties for failure to provide such an agreement, and for a limitation on the liability of mortgagees for a counseling entity's failure to provide the required notice. It further prohibits private rights of action on behalf of the borrower for violations of the section.

Title III -- Mortgage Servicing

Section 301. Escrow or impound accounts relating to certain consumer credit transactions

Current Federal law allows all consumers to voluntarily establish escrow or impound accounts with their mortgage servicer to cover property taxes, hazard insurance, and certain other regular expenses. Some homeowners, particularly those in the subprime marketplace who have had no escrow account established, have later encountered financial difficulties, including tax liens, force placement of insurance at high rates, and even foreclosure.

This section therefore establishes a new section in TILA to require that certain mortgages have an escrow or impound established at the time of consummation of the transaction. The instances in which an escrow or impound account must be established include (1) when required by Federal or State law; (2) when a loan is made, guaranteed, or insured by a State or Federal lending or insuring agency; (3) when the consumer's debt-to-income ratio exceeds 45 percent; (4) when the consumer obtains a higher-cost mortgage; (5) when the loan exceeds 90 percent of the sale price or appraised value; or (6) when required by the Federal Reserve Board.

Escrow or impound accounts established pursuant to this section must remain in existence for a minimum of five years, unless the underlying mortgage is terminated. Such accounts must be administered in accordance with RESPA and the law of the State where the real property securing the transaction is located. Consumers with mortgages covered by the section must also receive within three business days before loan consummation specific written disclosures, as prescribed by Federal Reserve Board regulations, about the escrow or impound accounts.

Section 302. Disclosure notice required for consumers who opt out of escrow services

This section amends TILA to require all consumers, regardless of whether they must have an escrow or impound account established at the time the loan is consummated in accordance with section 301 of the bill, to receive specified written disclosures advising them of the responsibilities of the consumer and implications for the consumer in the absence of any such account. These disclosures, which would be prescribed by Federal Reserve Board regulations, are modeled on guidance to lenders currently issued by Fannie Mae.

Section 303. Mortgage servicing clarification

When a mortgage servicer acquires the rights to service a loan portfolio it is generally exempt from complying with the Fair Debt Collection Practices Act (FDCPA) because the law extends the creditor's exemption to the new servicer. However, in a typical loan-servicing transfer, a small percentage of the reassigned loans will likely be delinquent or in default at the

time of the switch. These loans are therefore technically covered by the FDCPA, even though the new servicer has a fundamentally different relationship with the borrower than a *bona fide* debt collector.

This section resolves the problem by establishing a very narrow exemption under the FDCPA for servicers of first lien mortgages. This section is consistent with longstanding recommendations of the Federal Trade Commission to improve the application of the FDCPA to mortgage-servicing activities. The section has passed the House as stand-alone legislation on the suspension calendar on several occasions.

Section 304. Real Estate Settlement Procedures Act of 1974 amendments

This section updates RESPA and establishes new consumer protections related to servicer prohibitions, penalty amounts, service response times, pay-off requests, and escrow account refunds.

Servicer reforms

Subsection (a) prohibits mortgage servicers from force placing insurance unless there is a reasonable basis to believe that the borrower has failed to comply with the requirement to maintain property insurance. It also bars servicers from charging fees for responding to qualified written requests placed by the borrower. The subsection further prohibits mortgage servicers from failing to take timely action to respond to a borrower's requests to correct errors relating to the allocation of payments, final balances for purposes of paying off the loan or avoiding foreclosure, or other standard servicer duties.

Additionally, the subsection requires a servicer to respond within 10 days to a request from a borrower to provide the identity of and contact information for the owner assignee of the loan. Finally, the subsection requires servicers to comply with any other obligation to protect consumers established by the HUD Secretary.

Increase in penalties

Subsection (b) increases the maximum statutory RESPA penalties in individual cases from \$1,000 to \$2,000, and in class action cases from \$500,000 to \$1,000,000. The changes apply to all RESPA violations.

Other provisions

Subsections (c), (d), and (e) mandate decreases in response times to certain consumer inquiries, establish response times for obtaining pay-off amounts, and require the prompt refund of escrow accounts upon the payoff of a loan, respectively.

Section 305. Mortgage servicing studies required

This section requires the HUD Secretary, in consultation with the Federal Reserve Board

and the Federal Trade Commission, to conduct two comprehensive studies on mortgage servicing fraud and outlines numerous topics for examination. The first study, due 18 months after enactment, consists of an examination of the problem of mortgage servicing fraud. The second study, required 24 months after enactment, identifies ways to improve best practices of the industry in order to combat mortgage servicing fraud. The latter examination also provides recommendations for administrative or legislative action to fight mortgage servicing fraud and abuse.

Title IV -- Appraisal Activities

Section 401. Property appraisal requirements

This section amends TILA to require lenders to obtain a written appraisal, resulting from a physical inspection by a qualified appraiser, of the covered property before extending credit in the form of a higher-cost mortgage. If the purpose of the higher-cost mortgage is to finance the purchase or acquisition of the mortgaged property within 180 days of the purchase or acquisition of such property at a price that was lower than the current sale price of the property, the section also directs lenders to obtain a second appraisal at no cost to the consumer in order to protect against property flipping scams. Higher-cost mortgage borrowers are also entitled to one free copy of each such appraisal, and creditors found to have willfully failed to obtain an appraisal for a higher-cost mortgage are liable to the consumer for the sum of \$2,000.

Section 402. Amendments relating to Appraisal Subcommittee of FIEC, appraiser independence, and approved appraiser education

To enhance the accountability of the Appraisal Subcommittee, improve Federal oversight of State appraisal programs, and better protect all mortgage borrowers, the section makes a number of changes to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA).

Appraisal Subcommittee reforms

Subsection (a) requires the Appraisal Subcommittee to describe its activities in its annual report to Congress. Subsection (b) also opens meetings of the Appraisal Subcommittee to the general public to provide more disclosure and greater transparency. In order to provide the Appraisal Subcommittee with a more robust oversight system for State appraisal programs, subsection (c) authorizes the panel to issue binding rules and regulations after public notice and opportunity for comment. The rulemaking authority is intended to provide the interagency panel with a full range of supervisory sanctioning powers over State appraisal regulators.

Appraiser education and licensing

Subsections (d), (e), (f), (g) and (i) make a variety of changes to appraiser licensing and educational standards. For example, to facilitate the ability of qualified appraisers to conduct business across State lines, one subsection streamlines the process for obtaining practice permits

and another provides for reciprocity in State appraiser licensing. To promote professionalism and high ethical standards in the appraisal industry, an additional subsection permits special consideration as an indication of proficiency to be given to appraisers who have obtained special designations or training from professional appraisal organizations. Yet another subsection authorizes a State certifying or licensing agency to accept courses and seminars approved by the Appraiser Qualification Board's Course Approval Program for educational training requirements.

Appraiser independence

To enhance the independence of appraisers and help to ensure that they serve as an unbiased arbiter of a property's value for the buyer, seller, lender, investor and others, subsection (h) prohibits the parties interested in a real estate transaction involving an appraisal from improperly influencing or attempting to improperly influence, through coercion, extortion, or bribery, the development, reporting, result, or review of a real estate appraisal. No such requirement for appraiser independence currently exists under Federal law, but several States have adopted or are considering a similar standard.

The subsection is intended to help ensure that consumers are not relying on an overvalued appraisal to purchase a home. Individuals who obtained an overvalued appraisal may later encounter difficulty in refinancing or selling a home because the true value of the property used as collateral is less than the original mortgage. Protecting the independence of the appraiser will help to ensure that homes are properly valued.

Section 403. Study required on improvements in appraisal process and compliance programs

This section requires the Comptroller General to conduct a comprehensive study within 18 months of enactment on possible improvements in the appraisal process generally, and on the consistency in and the effectiveness of, and possible improvements in, State compliance efforts and programs in accordance with FIRREA specifically.

Title V -- Requirements for Mortgage Brokers

Subtitle A -- Licensing and Minimum Standards

Section 501. State regulation of mortgage brokers

The section requires States to develop within three years after enactment, uniform State laws establishing licensing requirements for mortgage brokers. States failing to establish such laws, or whose laws do not meet certain criteria, would become subject to regulations for the licensing of mortgage brokers issued by the HUD Secretary.

Under the section, State laws must require licensing for mortgage brokers. Such laws must also require applicants to submit a written license application, attend at least 24 hours of education, pass a written examination, and complete a criminal background check. The section

further stipulates that such State laws must establish minimum continuing education requirements for mortgage brokers, and require the public agency or agency responsible for mortgage broker licensing in a State to ensure that licensing information is submitted in a uniform manner to the national database created and maintained pursuant to subtitle B of title V of the *Responsible Lending Act* (see below).

The section additionally clarifies that States are not required to provide mortgage broker licenses for employees at certain financial institutions already regulated by the States or the Federal government, and other exempt entities.

Section 502. Federal mortgage broker requirements

The section requires the HUD Secretary, after consulting with the Federal banking agencies and the National Credit Union Administration, to issue regulations establishing Federal mortgage broker requirements that meet the standards established in section 501.

Section 503. Definitions

This section defines the various specialized terms used in this subtitle, including buyer, mortgage, and mortgage broker.

Subtitle B -- Database of Licensed Mortgage Brokers

Section 511. Establishment

The section mandates that the HUD Secretary establish and provide for the maintenance of a national database of mortgage brokers. In determining the information to be stored in the database, the Secretary would consult with State regulators' associations and other appropriate organizations. The Secretary could also contract with a private entity to construct and maintain the database, but the contract must be issued in a competitive manner and the Secretary must periodically review the performance of any private database administrator.

Section 512. Database

In general, the section establishes specific requirements for inclusion in the database. Such requirements include a listing of each person licensed under State law or regulation, or under the Federal mortgage broker requirements. The database must also make available to the public information regarding complaints and final disciplinary and enforcement actions taken against licensed mortgage brokers, and make available to the State regulators of mortgage brokers, as determined by the HUD Secretary, information necessary to carry out their duties as regulators. The database would also make available to companies and individuals employing mortgage brokers any information the Secretary deems appropriate.

Section 513. Fees

The section authorizes the HUD Secretary to charge fees to cover the cost of maintaining

and providing access to information from the database. Such fees, however, may not be charged to the general public.

Section 514. Confidentiality of information

The section provides that Federal and State laws regarding privacy of personal information will apply to the database, except for Federal or State disclosure requirements that could compromise the right to privacy of an individual with information in the database. Any State law that is inconsistent with this section is preempted to the extent that the State law provides less confidentiality or a weaker privilege.

Section 515. Liability provisions

The provision clarifies that State or Federal officials fulfilling the obligation to operate the database will not be liable for good-faith omissions or actions. Such individuals would, however, be criminally liable for intentional dissemination or disclosure of information in violation of any provision under this subtitle. The penalty for violations would be a fine not to exceed the greater of \$100,000 or actual damages and/or imprisonment not to exceed five years. Furthermore, these provisions could not be construed as a limitation on the protections of the Federal Tort Claims Act.