

June 18, 2010

The Honorable Barney Frank  
Chairman  
Financial Services Committee  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Christopher J. Dodd  
Chairman  
Banking, Housing and Urban Affairs Committee  
U.S. Senate  
Washington, DC 20510

The Honorable Spencer Bachus  
Ranking Member  
Financial Services Committee  
U.S. House of Representatives  
Washington, DC 20515

The Honorable Richard C. Shelby  
Ranking Member  
Banking, Housing and Urban Affairs Committee  
U.S. Senate  
Washington, DC 20510

Dear Mr. Chairmen and Ranking Members:

The undersigned organizations represent the entire residential mortgage lending industry, from the largest national lenders to locally based community banks and independent mortgage bankers. We are writing to express our concerns and views about several critical provisions that will impact the housing and mortgage markets in the base text of the Wall Street Reform and Consumer Protection Act. All of the organizations below strongly support the need for clear federal standards that will restore confidence in the housing market by establishing strong incentives for lenders and investors to fund well underwritten, sustainable mortgage products for consumers. There are several important provisions in the bill that accomplish this objective.

In addition, the base text of the bill also establishes very strong deterrents to the type of excessively complex, high-risk products and lax underwriting standards that helped lead to the mortgage crisis. Given the steep liability and enhanced penalties for both mortgage lenders and investors associated with potential violations of the new standards, it is critical that the incentives and deterrents in the bill be carefully balanced to provide the legal certainty necessary to attract private capital back to the mortgage market. We urge the conferees to consider the following recommendations that will provide the appropriate incentives for sustainable lending without causing an unnecessary tightening of credit conditions in the fragile housing market.

#### **1. Support the Landrieu-Isakson-Hagan Qualified Residential Mortgage Amendment**

The Landrieu-Isakson-Hagan amendment to the securitization reforms in the Senate bill, which is now contained in the base text, establishes the critically important Qualified Residential Mortgage (QRM) safe harbor to apply to the risk retention requirement (Sec. 941). The provision requires the banking regulators, SEC, HUD and FHFA to create a “gold standard” for mortgage securitization that encourages responsible liquidity for loans with underwriting standards and product features that provide consumers with stable, affordable home mortgage financing and produce lower defaults and foreclosures. The Senate bill focuses risk retention on higher risk products. At the same time, it creates strong incentives for lenders to follow regulatory standards for sound underwriting and originate good, sound loans for consumers that will not bear the significantly higher costs that will be associated with mortgages that are subject to risk retention.

*We strongly urge the conferees to SUPPORT the base text provisions on risk retention, specifically the bipartisan Landrieu-Isakson-Hagan amendment from the Senate bill.*

## **2. Provide Legal Certainty for Lenders that Comply with Ability To Repay, Tangible Benefit and Steering Protections**

The base text includes important protections for borrowers to ensure that every mortgage meets minimum standards prescribed by the Consumer Financial Protection Bureau:

- establishing a borrower's ability to repay,
- ensuring that refinance loans provide a net tangible benefit to the consumer, and
- prohibiting incentives to mortgage originators to steer borrowers to mortgage products that are inappropriate.

The text says that originators or securitizers of "Qualified Mortgages," as defined in Section 1413, "may presume" that such mortgages meet these standards but the presumption is characterized as "rebuttable." This rebuttable presumption leaves lenders, holders and assignees exposed to significant liability, including actual and statutory damages, as well as enhanced penalties that include the return of all finance charges back to the inception of the loan (this is a remedy currently reserved only for high-risk, high-cost HOEPA loans) even if they meet the Qualified Mortgage tests and soundly underwrite the loan. The lack of a true safe harbor for following *federally mandated* minimum standards for a Qualified Mortgage will result in lenders and investors establishing even tighter credit standards than those called for in the Qualified Mortgage or avoiding residential mortgage investments altogether because of the potential for excessive legal risks. Either of these outcomes would raise costs and limit choices for consumers and significantly impair the recovery in the housing sector.

We urge the conferees to amend the Qualified Mortgage provision in Section 1413 to provide a true safe harbor to lenders, investors and assignees that make or purchase mortgages that meet federal underwriting standards, as suggested in Attachment 1. Establishing a real safe harbor will provide important clarity and certainty to the capital markets. It will ensure that loans will be salable into the secondary market, and it will provide investors the clarity and legal certainty that these loans will also be compliant with the ability to pay and net tangible benefit standards. This is critical for a full recovery of the mortgage market, especially for the return of private capital for conventional loans not insured by the government.

In addition, we urge the conferees to provide guidance in the statute or report language to the regulators that they should assure that restrictions on "qualified mortgages" do not inadvertently curtail the origination of well underwritten home equity lines of credit (HELOCs) which may have an interest-only payment feature. Legislative language should also direct the federal banking regulators, SEC, HUD and FHFA (regulators for the purposes of risk retention under Sec. 941) to coordinate with the Consumer Financial Protection Bureau to ensure that the Qualified Residential Mortgage safe harbor from the risk retention section of the bill is strongly aligned with the Qualified Mortgage safe harbor in the ability to pay standard (Sec. 1413). This will ensure that the market will benefit from the certainty of a single underwriting "gold standard." Finally, consideration should be given to providing guidance that a rate/term refinance that lowers the rate and payment to the borrower should fit within the definition of a qualified mortgage without the need to further document income and assets. Such direction would make it possible to provide this benefit to many more borrowers.

## **3. Ensure that Limits on Fees and Points in the Qualified Mortgage do not Raise Costs or Limit Access to Credit, Especially for Low-Balance Loans**

The definition of a Qualified Mortgage (for which the CFPB will promulgate rules under Section 1413) includes a three-percent cap on the total points and fees payable in connection with the loan. While there have been significant improvements over previous bills to the formulation of this cap, concerns remain that many low-balance loans to well qualified borrowers could still exceed the three-percent limit. We recommend that the conferees include language that directs the regulator to use its authority to modify the safe harbor to set a higher threshold for low-balance mortgages to ensure the continued flow of funds to these loans, which are often made

to low- or moderate-income or rural borrowers.

In addition, we recommend the conferees include a technical correction to the definition of points and fees in the Qualified Mortgage that clarifies that points and fees include only amounts “payable at or before closing by the borrower.” Otherwise, seller-paid discount points and other amounts could be inadvertently counted in the cap, resulting in high-quality loans being removed from the safe harbor. In a similar vein, we recommend the conferees correct an error in Sec. 1431(c) amending TILA to redefine Points and Fees. Line 19 on page 1841 of the base text should refer to TILA §129C(d)(3) instead of 103(cc). Without this change, reasonable prepayment fees which are permissible for qualified mortgages under Sec. 1415’s amendments to TILA will not be available. See Attachment 2.

#### **4. Eliminate unwise liability and damage provisions of the bill that will unduly stem investment and ultimately harm borrowers.**

We are very concerned about Sec. 1414 in the base text that would permit borrowers to assert defenses to payment in the way of set-offs and recoupment against an assignee or holder based on certain violations by the creditor. By creating a perpetual, federal right of set-off or recoupment against assignees or holders as well as creditors, the bill will provide a powerful disincentive to invest in mortgages and mortgage-backed securities. The enhanced liability will ensure that virtually no loans outside of the qualified label will be eligible in the marketplace to be financed, purchased and securitized, particularly because an assignee will never really know if the statutory test is satisfied, and virtually any attempt to collect on a delinquent loan could be met with legal challenges. Accordingly, we strongly recommend that only monetary damages, found in Section 130(a)(1), (2) and (3) as increased by the base text be imposed for violations under the new law. We believe that the availability of enhanced monetary damages, which presently are only available for violations of HOEPA with respect to “high cost” loans, should be eliminated because it is a remedy that is likely to be wholly disproportionate to the severity of the violations and result in costly economic windfalls for litigants.

#### **5. Improve Regulation of the Appraisal Process Without Conflicts of Interest, Unduly Limiting Competition and Establishing Unwise Disclosure Requirements**

We share the view of the Home Valuation Code of Conduct (HVCC) and guidance from federal agencies that, to facilitate fair and impartial appraisals, commissioned loan production personnel and other market participants with a financial stake in the home purchase or refinance transaction should not influence the appraisal process. For this reason, we commend the base text’s exclusion of earlier language in the House-passed bill that would not have allowed the regulators to prohibit the use of appraisals ordered by loan originators. We would oppose inclusion of the earlier text in the final bill.

In insulating appraisal activities from production functions, lenders have employed both appraisal management companies (AMCs) and internal firewalls. Both methods have resulted in sounder valuations. Considering lenders use of AMCs, we are concerned about provisions of the base text that may undermine the continued viability of AMCs. Specifically, the text would assign regulation of AMCs, including national AMCs, to state appraisal boards and empower the boards to set fees for registration of AMC appraisers. This requirement invites a patchwork of disparate and burdensome requirements. At the same time, by permitting fees on a per appraiser basis, larger AMCs may face prohibitively high costs. To address these concerns, we urge the conferees to assign regulation of national AMCs to a single federal regulator, experienced with regulation of AMCs and, at minimum, to establish a maximum cap on registration fees for AMCs.

We also urge elimination of the requirement in the base text that there be separate disclosure of appraisal and vendor management fees. The Department of Housing and Urban Development has recently promulgated a new good faith estimate (GFE) and settlement statement (HUD-1), which, in contrast to the base text, require aggregation of related fees. These new forms are now being implemented at a high cost to lenders and borrowers. Moreover, under the base text, the new Consumer Financial Protection Bureau is charged with

responsibility for disclosures and its review of such requirements is anticipated. Accordingly, we do not believe the enactment of these new appraisal disclosure requirements on a piecemeal basis is wise. Attachment 3 offers language to remedy these concerns.

## **6. Avoid Unintended Consequences and Unnecessary Requirements Relating to Mortgage Servicing**

Some of the technical provisions in Title XIV, Subtitle B and E, relating to mortgage servicing, require revision to be operationally workable, to provide clear guidance, to be consistent with state regulation of insurance premiums, and to ensure that properties are covered by hazard insurance at all times. As examples, the escrow account section needs clarity to allow servicers to comply with its intent and to allow creditors to require escrow accounts on first lien loans beyond those enumerated. In Subtitle B, we seek operational flexibility to allow servicers to use coupon books for fixed-rate loans and other traditional products rather than mandate monthly statements to deliver loan and payment information. In addition, some of the provisions in Title XIV do not have an implementation period, but will need one because implementation will require new regulations. The regulations must logically precede implementation.

Finally, Section 1465 would require pre-consummation disclosures under the Truth in Lending Act to state the payment amounts, including payments into an escrow account. Although the drafters attempted to address cases of uncertainty, some uncertainty would remain. Creditors will need protection from liability for inaccurate estimated escrow payments. Attachment 4 addresses these and other points.

## **7. Coordinate Deadlines and Effective Dates**

Considering the large volume of new rules called for in the bill, conferees should ensure that rulemaking deadlines for similar provisions, such as the qualified safe harbor provisions, have common deadlines and effective dates to allow systems and compliance processes to be developed and modified by creditors and their vendors in a coordinated, orderly fashion. Reasonable implementation periods will be needed because of the large number of new procedures and systems that must be integrated, not only those associated with Title XIV but those associated with all of the other titles of the Act.

We urge that the title take care to coordinate effective dates (e.g., on risk retention and ability to repay) to mitigate the prospect of inadvertent market disruptions. In addition, the final bill should provide regulators the authority to extend any effective date if that is necessary to ensure ongoing availability of credit or otherwise meet the purposes of the Act. Where specific regulations are not required, the effective date of provisions in the Act should be at least one year after enactment.

Thank you for your consideration of our views on these important issues.

**American Financial Services Association**  
**Community Mortgage Banking Project**  
**Community Mortgage Lenders of America**  
**Consumer Mortgage Coalition**  
**Housing Policy Council**  
**Independent Community Bankers of America**  
**Mortgage Bankers Association**

# ATTACHMENT 1

## Amendment to Qualified Mortgage Safe Harbor

Page 1804, Line 18

### SEC. 1413. SAFE HARBOR ~~AND REBUTTABLE PRESUMPTION.~~

Section 129C of the Truth in Lending Act is amended by inserting after subsection (b) (as added by section 1411) the following new subsection:

` (c) ~~Presumption of Ability to Repay and Net Tangible Benefit Safe Harbor—~~

`(1) IN GENERAL- Any creditor with respect to any residential mortgage loan, and any assignee or securitizer of such loan, ~~may presume that the loan has met the requirements of subsections (a) and (b),~~ is deemed to have complied with section 129C, including any rule or guidance issued pursuant thereto, if the loan is a qualified mortgage.

## ATTACHMENT 2

### Technical Amendments Related to Fees and Points

Page 1807, lines 1-4:

(vii) for which the total points and fees (as defined in subparagraph (C)) payable by the consumer at or before consummation in connection with the loan do not exceed 3 percent of the total loan amount;

Page 1837 at the end of line 8, add:

“by the consumer at or before consummation”.

Page 1841 line 19:

(E) except as provided in ~~subsection (e)~~ **section 129C(d)(3)**,

## Attachment 3

### Subtitle F—Appraisal Activities

#### SEC. 9501. PROPERTY APPRAISAL REQUIREMENTS.

Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after 129G (as added by section 9404(b)) the following new section:

#### “SEC. 129H PROPERTY APPRAISAL REQUIREMENTS.

“(a) IN GENERAL.—A creditor may not extend credit in the form of a subprime mortgage to any consumer without first obtaining a written appraisal of the property to be mortgaged prepared in accordance with the requirements of this section.

#### “(b) APPRAISAL REQUIREMENTS.—

“(1) PHYSICAL PROPERTY VISIT.— An appraisal of property to be secured by a subprime mortgage does not meet the requirement of this section unless it is performed by a qualified appraiser who conducts a physical property visit of the interior of the mortgaged property.

#### “(2) SECOND APPRAISAL UNDER CERTAIN CIRCUMSTANCES.—

“(A) IN GENERAL.—If the purpose of a subprime mortgage is to finance the purchase or acquisition of the mortgaged property from a person within 180 days of the purchase or acquisition of such property by that person at a price that was lower than the current sale price of the property, the creditor shall obtain a second appraisal from a different qualified appraiser. The second appraisal shall include an analysis of the difference in sale prices, changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale.

“(B) NO COST TO APPLICANT.—The cost of any second appraisal required under subparagraph (A) may not be charged to the applicant.

“(3) QUALIFIED APPRAISER DEFINED.—For purposes of this section, the term ‘qualified appraiser’ means a person who—

“(A) is, at a minimum, certified or licensed by the State in which the property to be appraised is located; and

“(B) performs each appraisal in conformity with the Uniform Standards of Professional Appraisal Practice and title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, and the regulations prescribed under such title, as in effect on the date of the appraisal.

“(c) FREE COPY OF APPRAISAL.—A creditor shall provide 1 copy of each appraisal conducted in accordance with this section in connection with a subprime mortgage to the applicant without charge, and at least 3 days prior to the transaction closing date.

“(d) CONSUMER NOTIFICATION.—At the time of the initial mortgage application, the applicant shall be provided with a statement by the creditor that any appraisal prepared for the mortgage is for the sole use of the creditor, and that the applicant may choose to have a separate appraisal conducted at their own expense.

“(e) VIOLATIONS.—In addition to any other liability to any person under this title, a creditor found to have willfully failed to obtain an appraisal as required in this section shall be liable to the applicant or borrower for the sum of \$2,000.

“(f) SUBPRIME MORTGAGE DEFINED.—For purposes of this section, the term ‘subprime mortgage’ means a residential mortgage loan, other than a reverse mortgage loan insured by the Federal Housing Administration, secured by a principal dwelling with an annual percentage rate that exceeds the average prime offer rate for a comparable transaction, as of the date the interest rate is set—

“(1) by 1.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2));

“(2) by 2.5 or more percentage points, in the case of a first lien residential mortgage loan having an original principal obligation amount that exceeds the amount of the maximum limitation on the original principal

obligation of mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)); and

“(3) by 3.5 or more percentage points for a subordinate lien residential mortgage loan.”.

**SEC. 9502. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.**

(a) **IN GENERAL.**—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 129D (as added by section 9401(a)) the following new section:

**“SEC. 129E. UNFAIR AND DECEPTIVE PRACTICES AND ACTS RELATING TO CERTAIN CONSUMER CREDIT TRANSACTIONS.**

“(a) **IN GENERAL.**—It shall be unlawful, in extending credit or in providing any services for a consumer credit transaction secured by the principal dwelling of the consumer, to engage in any unfair or deceptive act or practice as described in or pursuant to regulations prescribed under this section.

“(b) **APPRAISAL INDEPENDENCE.**—For purposes of subsection (a), unfair and deceptive practices shall include—

“(1) any appraisal of a property offered as security for repayment of the consumer credit transaction that is conducted in connection with such transaction in which a person with an interest in the underlying transaction compensates, coerces, extorts, colludes, instructs, induces, bribes, or intimidates a person conducting or involved in an appraisal, or at tempts, to compensate, coerce, extort, collude, instruct, induce, bribe, or intimidate such a person, for the purpose of causing the appraised value assigned, under the appraisal, to the property to be based on any factor other than the independent judgment of the appraiser;

“(2) mischaracterizing, or suborning any mischaracterization of, the appraised value of the property securing the extension of the credit;

“(3) seeking to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the transaction; and

“(4) withholding or threatening to withhold timely payment for an appraisal report or for appraisal services rendered.

“(c) **EXCEPTIONS.**—The requirements of subsection (b) shall not be construed as prohibiting a mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, consumer, or any other person with an interest in a real estate transaction from asking an appraiser to provide 1 or more of the following services:

“(1) Consider additional, appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

“(2) Provide further detail, substantiation, or explanation for the appraiser’s value conclusion.

“(3) Correct errors in the appraisal report.

“(d) **PROHIBITIONS ON CONFLICTS OF INTEREST.**—

No certified or licensed appraiser conducting, and no appraisal management company procuring or facilitating, an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer may have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal.

“(e) **MANDATORY REPORTING.**—Any mortgage lender, mortgage broker, mortgage banker, real estate broker, appraisal management company, employee of an appraisal management company, or any other person involved in a real estate transaction involving an appraisal in connection with a consumer credit transaction secured by the principal dwelling of a consumer who has a reasonable basis to believe an appraiser is failing to comply with the Uniform Standards of Professional Appraisal Practice, is violating applicable laws, or is otherwise engaging in unethical or unprofessional conduct, shall refer the matter to the applicable State appraiser certifying and licensing agency.

“(f) **NO EXTENSION OF CREDIT.**—In connection with a consumer credit transaction secured by a consumer’s principal dwelling, a creditor who knows, at or before loan consummation, of a violation of the appraisal independence standards established in subsections (b) or (d) shall not extend credit based on such

appraisal unless the creditor documents that the creditor has acted with reasonable diligence to determine that the appraisal does not materially misstate or misrepresent the value of such dwelling.

“(g) RULEMAKING PROCEEDINGS.—The Board, the Comptroller of the Currency, the Director of the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the National Credit Union Administration Board, and the Federal Trade Commission—

“(1) shall, for purposes of this section, jointly prescribe regulations no later than 180 days after the date of the enactment of this section, and where such regulations have an effective date of no later than 1 year after the date of the enactment of this section, defining with specificity acts or practices which are unfair or deceptive in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer or mortgage brokerage services for such a transaction and defining any terms in this section or such regulations; and

“(2) may jointly issue interpretive guidelines and general statements of policy with respect to unfair or deceptive acts or practices in the provision of mortgage lending services for a consumer credit transaction secured by the principal dwelling of the consumer and mortgage brokerage services for such a transaction, within the meaning of subsections (a), (b), (c), (d), (e), and (f).

“(h) PENALTIES.—

“(1) FIRST VIOLATION.—In addition to the enforcement provisions referred to in section 130, each person who violates this section shall forfeit and pay a civil penalty of not more than \$10,000 for each day any such violation continues.

“(2) SUBSEQUENT VIOLATIONS.—In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting ‘\$20,000’ for ‘\$10,000’ with respect to all subsequent violations.

“(3) ASSESSMENT.—The agency referred to in subsection (a) or (c) of section 108 with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.”.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 2 of the Truth in Lending Act is amended by inserting after the item relating to section 129D (as added by section 9401(c)) the following new item: “129E. Unfair and deceptive practices and acts relating to certain consumer credit transactions.”.

**SEC. 9503. AMENDMENTS RELATING TO APPRAISAL SUBCOMMITTEE OF FIEC, APPRAISER INDEPENDENCE MONITORING, APPROVED APPRAISER EDUCATION, APPRAISAL MANAGEMENT COMPANIES, APPRAISER COMPLAINT HOTLINE, AUTOMATED VALUATION MODELS, AND BROKER PRICE OPINIONS.**

(a) CONSUMER PROTECTION MISSION.—

(1) PURPOSES.—Section 1101 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331) is amended by inserting “and to provide the Appraisal Subcommittee with a consumer protection mandate” before the period at the end.

(2) FUNCTIONS OF APPRAISAL SUBCOMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended—

(A) by striking “and” at the end of paragraph (3); and (B) by amending paragraph (4) to read as follows:

“(4) monitor the efforts of, and requirements established by, States and the Federal financial institutions regulatory agencies to protect consumers from improper appraisal practices and the predations of unlicensed appraisers in consumer credit transactions that are secured by a consumer’s principal dwelling; and”.

(3) THRESHOLD LEVELS.—Section 1112(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3341(b)) is amended by inserting before the period the following: “, and that such threshold level provides reasonable protection for consumers who purchase 1–4 unit single-family residences. In determining whether a threshold level provides reasonable protection for consumers, each Federal financial institutions regulatory agency shall consult with consumer groups and convene a public hearing”.

(b) ANNUAL REPORT OF APPRAISAL SUBCOMMITTEE.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) is amended at the end by inserting the following new paragraph:

“(5) transmit an annual report to the Congress not later than January 31 of each year that describes the manner in which each function assigned to the Appraisal Subcommittee has been carried out during the preceding year. The report shall also detail the activities of the Appraisal Subcommittee, including the results of all audits of State appraiser regulatory agencies, and provide an accounting of disapproved actions and warnings taken in the previous year, including a description of the conditions causing the disapproval and actions taken to achieve compliance.”.

(c) OPEN MEETINGS.—Section 1104(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3333(b)) is amended by inserting “in public session after notice in the Federal Register” after “shall meet”.

(d) REGULATIONS.—Section 1106 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3335) is amended—

(1) by inserting “prescribe regulations after notice and opportunity for comment,” after “hold hearings”; and  
(2) at the end by inserting “Any regulations prescribed by the Appraisal Subcommittee shall (unless otherwise provided in this title) be limited to the following functions: temporary practice, national registry, information sharing, and enforcement. For purposes of prescribing regulations, the Appraisal Subcommittee shall establish an advisory committee of industry participants, including appraisers, lenders, consumer advocates, and government agencies, and hold meetings as necessary to support the development of regulations.”.

APPRAISALS AND APPRAISAL REVIEWS.—Section 1113 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3342) is amended—(1) by striking “In determining” and inserting “(a) IN GENERAL.—In determining”;

(2) in subsection (a) (as designated by paragraph (1)), by inserting before the period the following: “, where a complex 1-to-4 unit single family residential appraisal means an appraisal for which the property to be appraised, the form of ownership, the property characteristics, or the market conditions are atypical”; and  
(3) by adding at the end the following new subsection:

“(b) APPRAISALS AND APPRAISAL REVIEWS.—All appraisals performed at a property within a State shall be prepared by appraisers licensed or certified in the State where the property is located. All USPAP-compliant appraisal reviews, including appraisal reviews by a lender, appraisal management company, or other third party organization, shall be performed by an appraiser who is duly licensed or certified by a State appraisal board.”.

(f) APPRAISAL MANAGEMENT SERVICES.—

(1) SUPERVISION OF THIRD PARTY PROVIDERS

OF APPRAISAL MANAGEMENT SERVICES.—Section 1103(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3332(a)) (as previously amended by this section) is further amended—

(A) by amending paragraph (1) to read as follows:

“(1) monitor the requirements established by States—

“(A) for the certification and licensing of individuals who are qualified to perform appraisals in connection with federally related transactions, including a code of professional responsibility; and

“(B) for the registration and supervision of the operations and activities of an appraisal management company;”; and

(B) by adding at the end the following new paragraph:

“(7) maintain a national registry of appraisal management companies that either are registered with and subject to supervision of a State appraiser certifying and licensing agency, are operating subsidiaries of a Federally regulated financial institution, or are national appraisal management companies.”.

(2) APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.) is amended by adding at the end the following new section (and amending the table of contents accordingly):

“SEC. 1124. APPRAISAL MANAGEMENT COMPANY MINIMUM QUALIFICATIONS.

“(a) IN GENERAL.—The Appraiser Qualifications Board of the Appraisal Foundation shall establish minimum qualifications to be applied by a State in the registration of appraisal management companies. Such qualifications shall include a requirement that such companies—

“(1) register with and be subject to supervision by a State appraiser certifying and licensing agency in each State in which such company operates;

“(2) verify that only licensed or certified appraisers are used for federally related transactions;

“(3) require that appraisals coordinated by an appraisal management company comply with the Uniform Standards of Professional Appraisal Practice; and

“(4) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

“(b) EXCEPTION FOR FEDERALLY REGULATED FINANCIAL INSTITUTIONS.—The requirements of subsection

Exception for Federally Regulated Financial Institutions and National Appraisal Management Companies.—

The requirements of subsection (a) shall not apply to either an appraisal management company that is a subsidiary owned and controlled by a financial institution and regulated by a federal financial institution regulatory agency or a national appraisal management company. In such case, the appropriate federal financial institutions regulatory agency, or the Appraisal Subcommittee, shall, at a minimum, develop exclusive federal regulations affecting the operations of the appraisal management company to—

“(1) verify that only licensed or certified appraisers are used for federally related transactions;

“(2) require that appraisals coordinated by an institution or subsidiary providing appraisal management services comply with the Uniform Standards of Professional Appraisal Practice; and

“(3) require that appraisals are conducted independently and free from inappropriate influence and coercion pursuant to the appraisal independence standards established under section 129E of the Truth in Lending Act.

“(c) REGISTRATION LIMITATIONS.—An appraisal management company shall not be registered by a State if such company, in whole or in part, directly or indirectly, is owned by any person who has had an appraiser license or certificate refused, denied, cancelled, surrendered in lieu of revocation, or revoked in any State. Additionally, each person that owns more than 10 percent of an appraisal management company shall be of good moral character, ~~as determined by the State appraiser certifying and licensing agency~~, and shall submit to a background investigation ~~carried out by the State appraiser certifying and licensing agency~~ that is conducted by the Appraisal Subcommittee to be accepted as a suitable in all States.

“(d) REGULATIONS.—The Appraisal Subcommittee shall promulgate regulations to implement the minimum qualifications developed by the Appraiser Qualifications Board under this section, as such qualifications relate to the State appraiser certifying and licensing agencies. The Appraisal Subcommittee shall also promulgate regulations for the reporting of the activities of appraisal management companies in determining the payment of the annual registry fee. The Appraisal Subcommittee shall also promulgate regulations for the supervision and regulation of appraisal management companies.

“(e) EFFECTIVE DATE.—

“(1) IN GENERAL.—No appraisal management company may perform services related to a federally related transaction in a State after the date that is 36 months after the date of the enactment of this section unless such company is registered with such State or subject to oversight by a federal financial institutions regulatory agency.

“(2) EXTENSION OF EFFECTIVE DATE.—Subject to the approval of the Council, the Appraisal Subcommittee may extend by an additional 12 months the requirements for the registration and supervision of appraisal management companies if it makes a written finding that a State has made substantial progress in establishing a State appraisal management company registration and supervision system that appears to conform with the provisions of this title.”.

(3) STATE APPRAISER CERTIFYING AND LICENSING AGENCY AUTHORITY.—Section 1117 of the

Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3346) is amended by adding at the end the following: “The duties of such agency may additionally include the registration and supervision of applicable appraisal management companies.”.

(4) APPRAISAL MANAGEMENT COMPANY DEFINITION.—Section 1121 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989(12 U.S.C. 3350) is amended by adding at the end the following:

“(11) APPRAISAL MANAGEMENT COMPANY.—

The term ‘appraisal management company’ means, in connection with valuing properties collateralizing mortgage loans or mortgages incorporated into a securitization, any external third party authorized either by a creditor of a consumer credit transaction secured by a consumer’s principal dwelling or by an underwriter of or other principal in the secondary mortgage markets, that oversees a network or panel of more than 15 certified or licensed appraisers in a State or 25 or more nationally within a given year—

“(A) to recruit, select, and retain appraisers;

“(B) to contract with licensed and certified appraisers to perform appraisal assignments;

“(C) to manage the process of having an appraisal performed, including providing administrative duties such as receiving appraisal orders and appraisal reports, submitting completed appraisal reports to creditors and underwriters, collecting fees from creditors and underwriters for services provided, and reimbursing appraisers for services performed; or

“(D) to review and verify the work of appraisers.”.

“(12) National Appraisal Management Company

“The term “national appraisal management company” means an appraisal management company as defined in (11) and that does business in the majority of states and agrees to be exclusively supervised and regulated by the Office of the Comptroller of the Currency.

(g) STATE AGENCY REPORTING REQUIREMENT.—

Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(1) by striking “and” after the semicolon in paragraph (1);

(2) by redesignating paragraph (2) as paragraph (4); and

(3) by inserting after paragraph (1) the following new paragraphs:

“(2) transmit reports on sanctions, disciplinary actions, license and certification revocations, and license and certification suspensions on a timely basis to the national registry of the Appraisal Subcommittee;

“(3) transmit reports on a timely basis of supervisory activities involving appraisal management companies or other third-party providers of appraisals and appraisal management services, including in investigations initiated and disciplinary actions taken; and”.

(h) REGISTRY FEES MODIFIED.—

(1) IN GENERAL.—Section 1109(a) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3338(a)) is amended—

(A) by amending paragraph (4) (as modified by section 9503(g)) to read as follows:

“(4) collect—

“(A) from such individuals who perform or seek to perform appraisals in federally related transactions, an annual registry fee of not more than \$40, such fees to be transmitted by the State agencies to the Council on an annual basis; and

“(B) from an appraisal management company that either has registered with a State appraiser certifying and licensing agency in accordance with this title, or operates as a subsidiary of a federally regulated financial institution, or is a national appraisal management company, an annual registry fee (not to exceed a total of \$40,000 per company) of--

“(i) in the case of such a company that has been in existence for more than a year, \$25 multiplied by the number of appraisers working for or contracting with such company in such State during the previous year, but where such \$25 amount may be adjusted, up to a maximum of \$50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the Subcommittee’s functions under this title; and

“(ii) in the case of such a company that has not been in existence for more than a year, \$25 multiplied by an appropriate number to be determined by the Appraisal Subcommittee, and where such number will be used for determining the fee of all such companies that were not in existence for more than a year, but where such \$25 amount may be adjusted, up to a maximum of \$50, at the discretion of the Appraisal Subcommittee, if necessary to carry out the functions under this title.”; and (B) by amending the matter following paragraph (4), as redesignated, to read as follows:

“Subject to the approval of the Council, the Appraisal Subcommittee may adjust the dollar amount of registry fees under paragraph (4)(A), up to a maximum of \$80 per annum, as necessary to carry out its functions under this title. The Appraisal Subcommittee shall consider at least once every 5 years whether to adjust the dollar amount of the registry fees to account for inflation. In implementing any change in registry fees, the Appraisal Subcommittee shall provide flexibility to the States for multi-year certifications and licenses already in place, as well as a transition period to implement the changes in registry fees. In establishing the amount of the annual registry fee for an appraisal management company, the Appraisal Subcommittee shall have the discretion to impose a minimum annual registry fee for an appraisal management company to protect against the under reporting of the number of appraisers working for or contracted by the appraisal management company.”.

(2) INCREMENTAL REVENUES.—Incremental revenues collected pursuant to the increases required by this subsection shall be placed in a separate account at the United States Treasury, entitled the “The Appraisal Subcommittee Account”.

(i) GRANTS AND REPORTS.—Section 1109(b) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(b)) is amended—

(1) by striking “and” after the semicolon in paragraph (3);

(2) by striking the period at the end of paragraph (4) and inserting a semicolon;

(3) by adding at the end the following new paragraphs:

“(5) to make grants to State appraiser certifying and licensing agencies to support the efforts of such agencies to comply with this title, including—

“(A) the complaint process, complaint investigations, and appraiser enforcement activities of such agencies; and

“(B) the submission of data on State licensed and certified appraisers and appraisal management companies to the National appraisal registry, including information affirming that the appraiser or appraisal management company meets the required qualification criteria and formal and informal disciplinary actions; and

“(6) to report to all State appraiser certifying and licensing agencies when a license or certification is surrendered, revoked, or suspended.”.

Obligations authorized under this subsection may not exceed 75 percent of the fiscal year total of incremental increase in fees collected and deposited in the “The Appraisal Subcommittee Account” pursuant to subsection (h).

(j) CRITERIA.—Section 1116 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3345) is amended—

(1) in subsection (c), by inserting “whose criteria for the licensing of a real estate appraiser currently meet or exceed the minimum criteria issued by the Appraisal Qualifications Board of The Appraisal Foundation for the licensing of real estate appraisers” before the period at the end; and

(2) by striking subsection (e) and inserting the following new subsection:

“(e) MINIMUM QUALIFICATION REQUIREMENTS.—

Any requirements established for individuals in the position of ‘Trainee Appraiser’ and ‘Supervisory Appraiser’ shall meet or exceed the minimum qualification requirements of the Appraiser Qualifications Board of The Appraisal Foundation. The Appraisal Subcommittee shall have the authority to enforce these requirements.”.

(k) MONITORING OF STATE APPRAISER CERTIFYING AND LICENSING AGENCIES.—Section 1118 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3347) is amended—

(1) by amending subsection (a) to read as follows:

“(a) IN GENERAL.—The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purposes of determining whether such agency—

“(1) has policies, practices, funding, staffing, and procedures that are consistent with this title;

“(2) processes complaints and completes investigations in a reasonable time period;

“(3) appropriately disciplines sanctioned appraisers and appraisal management companies;

“(4) maintains an effective regulatory program;

and

“(5) reports complaints and disciplinary actions on a timely basis to the national registries on appraisers and appraisal management companies maintained by the Office of the Comptroller of the Currency.

The Appraisal Subcommittee shall have the authority to remove a State licensed or certified appraiser or a registered appraisal management company from a national registry on an interim basis pending State agency action on licensing, certification, registration, and disciplinary proceedings. The Appraisal Subcommittee and all agencies, instrumentalities, and Federally recognized entities under this title shall not recognize appraiser certifications and licenses from States whose appraisal policies, practices, funding, staffing, or procedures are found to be inconsistent with this title. The Appraisal Subcommittee shall have the authority to impose sanctions, as described in this section, against a State agency that fails to have an effective appraiser regulatory program. In determining whether such a program is effective, the Appraisal Subcommittee shall include an analyses of the licensing and certification of appraisers, the registration of appraisal management companies, the issuance of temporary licenses and certifications for appraisers, the receiving and tracking of submitted complaints against appraisers and appraisal management companies, the investigation of complaints, and enforcement actions against appraisers and appraisal management companies. The Appraisal Subcommittee shall have the authority to impose interim actions and suspensions against a State agency as an alternative to, or in advance of, the derecognition of a State agency.”.

(2) in subsection (b)(2), by inserting after “authority” the following: “or sufficient funding”.

(l) RECIPROCITY.—Subsection (b) of section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351(b)) is amended to read as follows:

“(b) RECIPROCITY.—A State appraiser certifying or licensing agency shall issue a reciprocal certification or license for an individual from another State when—

“(1) the appraiser licensing and certification program of such other State is in compliance with the provisions of this title; and

“(2) the appraiser holds a valid certification from a State whose requirements for certification or licensing meet or exceed the licensure standards established by the State where an individual seeks appraisal licensure.”.

(m) CONSIDERATION OF PROFESSIONAL APPRAISAL DESIGNATIONS.—Section 1122(d) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989

(12 U.S.C. 3351(d)) is amended by striking “shall not exclude” and all that follows through the end of the subsection and inserting the following: “may include education achieved, experience, sample appraisals, and references from prior clients. Membership in a nationally recognized professional appraisal organization may be a criteria considered, though lack of membership therein shall not be the sole bar against consideration for an assignment under these criteria.”.

(n) APPRAISER INDEPENDENCE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by adding at the end the following new subsection:

“(g) APPRAISER INDEPENDENCE MONITORING.—

The Appraisal Subcommittee shall monitor each State appraiser certifying and licensing agency for the purpose of determining whether such agency’s policies, practices, and procedures are consistent with the purposes of maintaining appraiser independence and whether such State has adopted and maintains effective laws, regulations, and policies aimed at maintaining appraiser independence.”.

(o) APPRAISER EDUCATION.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended by inserting after subsection (g) (as added by subsection (l) of this section) the following new subsection:

“(h) APPROVED EDUCATION.—The Appraisal Subcommittee shall encourage the States to accept courses approved by the Appraiser Qualification Board’s Course Approval Program.”.

(p) APPRAISAL COMPLAINT HOTLINE.—Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351), as amended by this section, is further amended by adding at the end the following new subsection:

“(i) APPRAISAL COMPLAINT NATIONAL HOTLINE.—

If, 1 year after the date of the enactment of this subsection, the Appraisal Subcommittee determines that no national hotline exists to receive complaints of non-compliance with appraisal independence standards and Uniform Standards of Professional Appraisal Practice, including complaints from appraisers, individuals, or other entities concerning the improper influencing or attempted improper influencing of appraisers or the appraisal process, the Appraisal Subcommittee shall establish and operate such a national hotline, which shall include a toll-free telephone number and an email address. If the Appraisal Subcommittee operates such a national hotline, the Appraisal Subcommittee shall refer complaints for further action to appropriate governmental bodies, including a State appraiser certifying and licensing agency, a financial institution regulator, or other appropriate legal authorities. For complaints referred to State appraiser certifying and licensing agencies or to Federal regulators, the Appraisal Subcommittee shall have the authority to follow up such complaint referrals in order to determine the status of the resolution of the complaint.”

AUTOMATED VALUATION MODELS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is further amended by adding at the end the following new section (and amending the table of contents accordingly):

“SEC. 1125. AUTOMATED VALUATION MODELS USED TO VALUE CERTAIN MORTGAGES.

“(a) IN GENERAL.—Automated valuation models shall adhere to quality control standards designed to—

“(1) ensure a high level of confidence in the estimates produced by automated valuation models;

“(2) protect against the manipulation of data;

“(3) seek to avoid conflicts of interest; and

“(4) require random sample testing and reviews, where such testing and reviews are performed by an appraiser who is licensed or certified in the State where the testing and reviews take place.

“(b) ADOPTION OF REGULATIONS.—The Appraisal Subcommittee and its member agencies, in consultation with the Appraisal Standards Board of the Appraisal Foundation and other interested parties, shall promulgate regulations to implement the quality control standards required under this section.

“(c) ENFORCEMENT.—Compliance with regulations issued under this subsection shall be enforced by—

“(1) with respect to a financial institution, or subsidiary owned and controlled by a financial institution and regulated by a Federal financial institution regulatory agency, the Federal financial institution regulatory agency that acts as the primary Federal supervisor of such financial institution or subsidiary; and

“(2) with respect to other persons, the Appraisal Subcommittee.

“(d) AUTOMATED VALUATION MODEL DEFINED.— For purposes of this section, the term ‘automated valuation model’ means any computerized model used by mortgage originators and secondary market issuers to determine the collateral worth of a mortgage secured by a consumer’s principal dwelling.”.

(r) BROKER PRICE OPINIONS.—Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3331 et seq.), as amended by this section, is further amended by adding at the end the following new section (and amending the table of contents accordingly):

“SEC. 1126. BROKER PRICE OPINIONS.

“(a) GENERAL PROHIBITION.—In conjunction with the purchase of a consumer’s principal dwelling, broker price opinions may not be used as the primary basis to determine the value of a piece of property for the purpose of a loan origination of a residential mortgage loan secured by such piece of property.

“(b) BROKER PRICE OPINION DEFINED.—For purposes of this section, the term ‘broker price opinion’ means an estimate prepared by a real estate broker, agent, or sales person that details the probable selling price

of a particular piece of real estate property and provides a varying level of detail about the property's condition, market, and neighborhood, and information on comparable sales, but does not include an automated valuation model, as defined in section 1125(c).”.

(s) **AMENDMENTS TO APPRAISAL SUBCOMMITTEE.**—

Section 1011 of the Federal Financial Institutions Examination Council Act of 1978 (12 U.S.C. 3310) is amended—

(1) in the first sentence, by adding before the period the following: “and the Federal Housing Finance Agency”; and

(2) by inserting at the end the following: “At all times at least one member of the Appraisal Subcommittee shall have demonstrated knowledge and competence through licensure, certification, or professional designation within the appraisal profession.”.

(t) **TECHNICAL CORRECTIONS.**—

(1) Section 1119(a)(2) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3348(a)(2)) is amended by striking “council,” and inserting “Council,”.

(2) Section 1121(6) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(6)) is amended by striking “Corporations,” and inserting “Corporation,”.

(3) Section 1121(8) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(8)) is amended by striking “council” and inserting “Council”.

(4) Section 1122 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3351) is amended—

(A) in subsection (a)(1) by moving the left margin of subparagraphs (A), (B), and (C) 2 ems to the right; and

(B) in subsection (c)—

(i) by striking “Federal Financial Institutions Examination Council” and inserting “Financial Institutions Examination Council”; and

(ii) by striking “the council’s functions” and inserting “the Council’s functions”.

**SEC. 9504. STUDY REQUIRED ON IMPROVEMENTS IN APPRAISAL PROCESS AND COMPLIANCE PROGRAMS.**

(a) **STUDY.**—The Comptroller General shall conduct a comprehensive study on possible improvements in the appraisal process generally, and specifically on the consistency in and the effectiveness of, and possible improvements in, State compliance efforts and programs in accordance with title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. In addition, this study shall examine the existing exemptions to the use of certified appraisers issued by Federal financial institutions regulatory agencies. The study shall also review the threshold level established by Federal regulators for compliance under title XI and whether there is a need to revise them to reflect the addition of consumer protection to the purposes and functions of the Appraisal committee. The study shall additionally examine the quality of different types of mortgage collateral valuations produced by broker price opinions, automated valuation models, licensed appraisals, and certified appraisals, among others, and the quality of appraisals provided through different distribution channels, including appraisal management companies, independent appraisal operations within a mortgage originator, and fee-for-service appraisals. The study shall also include an analysis and statistical breakdown of enforcement actions taken during the last years against different types of appraisers, including certified, licensed, supervisory, and trainee appraisers. Furthermore, the study shall examine the benefits and costs, as well as the advantages and disadvantages, of establishing a national repository to collect data related to real estate property collateral valuations performed in the United States.

(b) **REPORT.**—Before the end of the 18-month period beginning on the date of the enactment of this Act, the Comptroller General shall submit a report on the study under subsection (a) to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate, together with such recommendations for administrative or legislative action, at the Federal or State level, as the Comptroller General may determine to be appropriate.

(c) **ADDITIONAL STUDY REQUIRED.**—The Comptroller General shall conduct an additional study to deter

mine the effects that the changes to the seller-guide appraisal requirements of Fannie Mae and Freddie Mac contained in the Home Valuation Code of Conduct have on small business, like mortgage brokers and independent appraisers, and consumers, including the effect on the—

- (1) quality and costs of appraisals;
- (2) length of time for obtaining appraisals;
- (3) impact on consumer protection, especially regarding maintaining appraisal independence, abating appraisal inflation, and mitigating acts of appraisal fraud;
- (4) structure of the appraisal industry, especially regarding appraisal management companies, fee-for-service appraisers, and the regulation of appraisal management companies by the states; and
- (5) impact on mortgage brokers and other small business professionals in the financial services industry.

(d) **ADDITIONAL REPORT.**—Before the end of the 6- month period beginning on the date of the enactment of this Act, the Comptroller General shall submit an additional report to the Committee on Financial Services of the House of Representatives and the Committee on Banking, Housing, and Urban Affairs of the Senate containing the findings and conclusions of the Comptroller General with respect to the study conducted pursuant to subsection (c). Such additional report shall take into consideration the Small Business Administration’s views on how small businesses are affected by the Home Valuation Code of Conduct.

**SEC. 9505. EQUAL CREDIT OPPORTUNITY ACT AMENDMENT.**

Subsection (e) of section 701 of the Equal Credit Opportunity Act (15 U.S.C. 1691) is amended to read as follows:

“(e) **COPIES FURNISHED TO APPLICANTS.**—

“(1) **IN GENERAL.**—Each creditor shall furnish to an applicant a copy of any and all written appraisals and valuations developed in connection with the applicant’s application for a loan that is secured or would have been secured by a first lien on a dwelling promptly upon completion, but in no case later than 3 days prior to the closing of the loan, whether the creditor grants or denies the applicant’s request for credit or the application is incomplete or withdrawn.

“(2) **WAIVER.**—The applicant may waive the 3 day requirement provided for in paragraph (1), except where otherwise required in law.

“(3) **REIMBURSEMENT.**—The applicant may be required to pay a reasonable fee to reimburse the creditor for the cost of the appraisal, except where otherwise required in law.

“(4) **FREE COPY.**—Notwithstanding paragraph (3), the creditor shall provide a copy of each written appraisal or valuation at no additional cost to the applicant.

“(5) **NOTIFICATION TO APPLICANTS.**—At the time of application, the creditor shall notify an applicant in writing of the right to receive a copy of each written appraisal and valuation under this subsection.

“(6) **REGULATIONS.**—The Board shall prescribe regulations to implement this subsection within 1 year of the date of the enactment of this subsection.

“(7) **VALUATION DEFINED.**—For purposes of this subsection, the term ‘valuation’ shall include any estimate of the value of a dwelling developed in connection with a creditor’s decision to provide credit, including those values developed pursuant to a policy of a government sponsored enterprise or by an automated valuation model, a broker price opinion, or other methodology or mechanism.”

~~**SEC. 9506. REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974 AMENDMENT RELATING TO CERTAIN APPRAISAL FEES.**~~

~~Section 4 of the Real Estate Settlement Procedures Act of 1974 is amended by adding at the end the following new subsection:~~

~~“(c) The standard form described in subsection (a) shall include, in the case of an appraisal coordinated by an appraisal management company (as such term is defined in section 1121(11) of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (12 U.S.C. 3350(11))), a clear disclosure of—~~

~~“(1) the fee paid directly to the appraiser by such company; and~~

~~“(2) the administration fee charged by such company.”~~

## Attachment 4

### Suggested Changes to H.R. 4173 Conference Base Text on Servicing Matters

#### Title XIV/Subtitle B – Minimum Standards for Mortgages

**Monthly Statements:** The Conference Base Text (the bill) requires servicers to send monthly statements to borrowers disclosing the amount of the principal obligation, rate of interest, date of interest adjustment, prepayment fee, late fee, and contact information. Most statements will have to be mailed, despite the fact that federal banking agencies are required to develop a standard form and determine when statements can be sent electronically (which requires borrower's informed opt-in). Smaller lenders, which do not provide coupon books, estimate the mailing cost will exceed \$1 million annually. Monthly statements are not necessary for most products, such as amortizing fixed-rate and yearly adjusting ARMs because the payments (and rate) do not change over the year. Additionally, coupon books list late fees. Servicers also send out separate late notices. Finally, contact information is provided in the coupon book regarding online and telephone access (often automated) to real-time information. Many borrowers prefer coupon books. They reduce paper clutter, identity theft, and lost statements leading to late payment. We urge limiting mandatory monthly statements to negative amortization products and products with interest rates that adjust more frequently than annually. Principal balance or prepayment penalties can be provided in the coupon book, thus not necessitating monthly statements.

- **Suggested amendment: Page 1831, line 13**, add the underlined text: “In connection with negative amortization loans and loans with rates that adjust more than once annually, the creditor assignee, or servicer with respect to any residential mortgage loan shall transmit to the obligor, for each billing cycle, a statement setting forth each of the following items to the extent applicable, in a conspicuous and prominent manner...”
- **Alternative: Page 1832, line 24**. Add after new §128(f)(2): (3) EXCEPTION. — The above requirement in subsection (f)(1) does not apply to any fixed-rate residential mortgage loan or adjustable rate residential mortgage loan that adjusts annually or less frequently and is not subject to negative amortization, where the creditor, assignee or servicer provide the obligor with a coupon book that provides an amortization schedule for the period showing principal and interest amounts assuming contractual payments are made timely, the amount of any late fee, and prepayment penalty if the loan is paid off.

#### Title XIV/Subtitle E – Mortgage Servicing

- I. **Effective Date:** There is no implementation period for much of Subtitle E. An implementation period is critical, especially given the systems changes and new regulations required for the new TILA disclosure on escrows, and for a valid qualified written request definition and timing changes.

Two sections in this Subtitle are in particular need of an implementation period. Section 1463(a), on page 1905 line 23 – page 1906 line 2, would prohibit servicers from charging fees for “valid qualified written requests” which the Secretary “shall” define by regulation. Until that regulation is final, servicers will not know what is required.

Similarly, page 1906, lines 8-12, requires servicers to respond to a request for the identity, address, and “other relevant contact information” about the owner assignee of the loan. This term “other relevant” information will need a definition and clarification through a regulation.

- **We suggest** adding on page 1906 after line 16: “(F) Paragraphs (B) and (D) of this subsection become effective one year after final implementing regulations have been published in the *Federal Register*.”

Section 1465 will also need regulatory clarity before it can be implemented. It requires payments into escrows accounts to be included in TILA disclosures before a loan is consummated. As stated below, creditors cannot always know what the tax and insurance payments will be. Violations could risk very substantial liability to even the most diligent creditors. For example, the bill would require creditors to use, in calculating the tax and insurance payments into escrow, “the taxable assessed value . . . after the consummation of the transaction, including the value of any improvements on the property or to be constructed on the property . . . if known”. (Page 1913 line 19 through page 1914 line 1.) Often they are not known, especially in new construction. In this case, what value is a creditor to use? Even if the industry is exempt from liability for these estimates as suggested below, regulatory clarity in this technical but important area is important so creditors can know what they are required to do.

- **We suggest** adding on page 1914 after line 3: (C) This subsection 4 becomes effective one year after final implementing regulations have been published in the Federal Register.”

## **II. Escrow and Impound Accounts, Section 1461, starting page 1894**

TILA Payment Schedule - Escrow Estimates: The bill requires escrow estimates to be included in TILA’s payment schedule disclosure. Failure to provide an accurate payment schedule may result in statutory penalties. By their very nature, escrow amounts collected at closing and throughout the life of the mortgage *are estimates*. RESPA permits borrowers to purposely underpay escrows on new construction based on land-only tax assessments. As a result, the TILA payment schedule will be inaccurate as contemplated by RESPA. Estimated escrow payments are in many cases unavoidable. Creditors must have a safe harbor against TILA liability for such estimates.

- **Suggested language:** Page 1914, after line 3, add the following new provision: “(C) The servicer’s or creditor’s inability to estimate escrow amounts accurately is not a cause of action for remedies under this Act.”

**Duration:** Section 1461(a) (new section 129D(c)) on page 1896 states that mandatory escrow accounts must remain in place for a minimum of 5 years and until the borrower has sufficient equity consistent with PMI cancellation laws. This sets the minimum standard the creditor must follow. Adding confusion to this requirement is the disclosure provision which discusses the consumer’s choice to terminate an escrow account. Is the disclosure provision granting substantive rights to borrowers? Does this disclosure prohibit the regulator from requiring escrows for the life of the loan as sometimes are required today? The disclosure will cause unnecessary litigation to determine whether substantive rights were granted to borrowers through a disclosure statement. New section 129D(e) provides appropriately that servicers have the discretion to establish escrow requirements (presumably including duration) for loans where escrows are not mandatory. Servicers must continue to have the authority to require escrows beyond 5 years/PMI cancellation date. We urge the following changes to ensure this outcome:

- **Suggested changes:** Page 1896, starting line 19: “...a minimum period of 5 years, beginning with the date of consummation of the loan, ~~and until such borrower has sufficient equity in the dwelling securing the consumer credit transaction so as to no longer be required to maintain private mortgage insurance,~~ or such other period as may be provided by regulation to address situations such as borrower delinquency, unless the underlying mortgage establishing the account is terminated. Nothing prohibits the lender or servicer from requiring escrows for longer periods.”
- Page 1900, line 21-22, change as follows: “The fact that, if ~~consumer chooses to terminate the escrow account is terminated at the appropriate time~~ in the future, the consumer....”

**Clarity on Ability to Require Escrows:** One of the problems Congress intends to address in this bill concerns loans originated without the consumer protection of escrow accounts. There is language in the bill to remedy this, but it is confusing. We urge more clarity to ensure that creditors are able to require escrow accounts on first-lien loans.

- **Suggested Changes:** Page 1894, eliminate lines 9-24 (new section 129D(a)).
- Page 1894, line 1 (new Section 129D(b)), change as follows “~~(a)(b)~~ **WHEN REQUIRED – No An** impound, trust or other type of account for payment of property taxes, insurance premiums, or other purposes relating to the property ~~shall may~~ be required as a condition of ~~a real property sale contract or a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or reverse mortgage, except when--...~~”
- Renumber successive subsections accordingly.

Escrows Prior To Closing: The bill requires the establishment of escrow accounts *before* the consummation of the transaction. This is impossible. An escrow account cannot be established until the borrower funds the account at consummation.

- **Suggested language:** *If new section 129D is not eliminated as suggested above, amend* Page 1894, lines 17-18: “... shall establish, ~~before the consummation of such a transaction,~~ an escrow account....”
- Page 1894, lines 13-14, strike the words “formation or”. Use of this term means the application stage of the mortgage.

### **III. Lender-placed Insurance**

Bona fide amounts: Section 1463(a) page 1909 requires lender-placed premiums to be “bona fide and reasonable in amount.” Servicers do not set rates for lender-placed insurance. Those rates are approved by state insurance agencies. This provision revises insurance law by allowing federal agencies to set insurance rates. *This language should be removed as already dealt with at the state level, or alternatively, rates governed by the state should be deemed per se reasonable.*

- **If this provision is not removed,** amend page 1909 starting on line 19 by adding the underlined language: “(m) LIMITATIONS ON LENDER-PLACED INSURANCE CHARGES. All charges for force-placed insurance premiums shall be bona fide and reasonable in amount. Forced-placed insurance premiums are deemed bona fide and reasonable in amount if governed by an appropriate state agency where the property is located.”

Demonstration: The bill would impose additional burdens on already overworked servicing staff to track down each borrower’s replacement insurance policy upon lapse or cancellation of the original insurance policy. It is reasonable to require the borrower to remit a “declarations page” to the servicer or to contact his/her insurance agent to provide such information – a common practice familiar to insurance agents and required for closing a loan. A declaration page is a sound indicator that the insurance is in force, and insurance protects consumers. Conversely aggregating the obligation on servicers to track down tens of thousands of borrowers’ information and also contact their insurance agents places an unreasonable, undue burden and cost on servicers, while risking a lapse in coverage.

- **Suggested language.** Page 1908, starting line 16: add the underlined language and remove the stricken language - “(2) SUFFICIENCY OF DEMONSTRATION: A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage. Reasonable confirmation includes requiring the borrower to provide a copy of the declaration page of the insurance policy. ~~, which shall include the existing insurance policy number along with the identity of the, and contact information for, the insurance company or agent.~~”

- *Alternatively, the bill could delegate what is acceptable demonstration to the agency responsible for regulations.*

Lapse Period: One of the benefits of lender-placed insurance coverage is that it provides coverage for lapses even if the servicer has not placed the insurance on the property due to the notice requirement. If the borrower can demonstrate no lapse of insurance, the lender-placed insurance is not put in force, and the borrower is not charged any premiums. However, if the borrower does have a lapse, the servicer is permitted to impose the premium for the lapsed period. A lapse in coverage could be devastating to a family whose home is destroyed during the lapse. Moreover, servicers may be contractually obligated to investors to ensure there is no lapse in coverage. Continue to ensure no lapse in coverage by amending the language as follows:

- **Suggested language:** Page 1908, after Line 15 add “(D) the borrower does not provide adequate demonstration of sufficient hazard, flood or other required peril insurance coverage or the demonstration shows that there was a period during which there was insufficient hazard, flood or other required peril insurance on the property in which case the servicer may impose a charge for the lender-placed insurance, effective from the date of lapse of the coverage until the effective date of the coverage obtained by the borrower.”

#### **Title XIV/Subtitle C—High Cost Mortgages**

Modification and Deferral Fees: The use of the word “extend” is problematic because a plain reading of the text would prohibit a loan originator from being paid to make a high cost mortgage. We believe the spirit of the language is to prohibit a fee for “extending the maturity date” of a loan.

- **Suggested Language.** Page 1849, line 2: remove the word “extend” and change to “extend the maturity date of”.