(Mr. BIDEN) was added as a cosponsor of S. 2112, a bill to amend the Public Health Service Act to establish the Nurse-Managed Health Clinic Investment program, and for other purposes.

S. 2140

At the request of Mr. DORGAN, the names of the Senator from Michigan (Ms. STABENOW), the Senator from Illinois (Mr. DURBIN), the Senator from Illinois (Mr. OBAMA) and the Senator from West Virginia (Mr. BYRD) were added as cosponsors of S. 2140, a bill to award a Congressional Gold Medal to Francis Collins, in recognition of his outstanding contributions and leadership in the fields of medicine and genetics.

S. 2257

At the request of Mrs. LINCOLN, her name was added as a cosponsor of S. 2257, a bill to impose sanctions on officials of the State Peace and Development Council in Burma, to amend the Burmese Freedom and Democracy Act of 2003 to prohibit the importation of gemstones and hardwoods from Burma, to promote a coordinated international effort to restore civilian democratic rule to Burma, and for other purposes.

S. 2277

At the request of Mr. SMITH, the name of the Senator from Texas (Mr. CORNYN) was added as a cosponsor of S. 2277, a bill to amend the Internal Revenue Code of 1986 to increase the limitation on the issuance of qualified veterans' mortgage bonds for Alaska, Oregon, and Wisconsin and to modify the definition of qualified veteran.

S. 2341

At the request of Mr. JOHNSON, his name was added as a cosponsor of S. 2341, a bill to provide Individual Development Accounts to support foster youths who are transitioning from the foster care system.

S. 2400

At the request of Mr. SESSIONS, the name of the Senator from Minnesota (Mr. COLEMAN) was added as a cosponsor of S. 2400, a bill to amend title 37, United States Code, to require the Secretary of Defense to continue to pay to a member of the Armed Forces who is retired or separated from the Armed Forces due to a combat-related injury certain bonuses that the member was entitled to before the retirement or separation and would continue to be entitled to if the member was not retired or separated, and for other purposes.

S. 2408

At the request of Mr. KERRY, the name of the Senator from Rhode Island (Mr. WHITEHOUSE) was added as a cosponsor of S. 2408, a bill to amend title XVIII of the Social Security Act to require physician utilization of the Medicare electronic prescription drug program.

S. CON. RES. 53

At the request of Mr. NELSON of Florida, the names of the Senator from Montana (Mr. BAUCUS) and the Senator from California (Mrs. FEINSTEIN) were added as cosponsors of S. Con. Res. 53, a concurrent resolution condemning the kidnapping and hostage-taking of 3 United States citizens for over 4 years by the Revolutionary Armed Forces of Colombia (FARC), and demanding their immediate and unconditional release.

S. RES. 388

At the request of Mr. CRAPO, the names of the Senator from Rhode Island (Mr. WHITEHOUSE) and the Senator from Rhode Island (Mr. REED) were added as cosponsors of S. Res. 388, a resolution designating the week of February 4 through February 8, 2008, as ''National Teen Dating Violence Awareness and Prevention Week''.

S. RES. 401

At the request of Mr. LIEBERMAN, the name of the Senator from Wisconsin (Mr. FEINGOLD) was added as a cosponsor of S. Res. 401, a resolution to provide Internet access to certain Congressional Research Service publications.

AMENDMENT NO. 3614

At the request of Mr. DOMENICI, the names of the Senator from Nebraska (Mr. NELSON), the Senator from South Dakota (Mr. JOHNSON), the Senator from Iowa (Mr. GRASSLEY) and the Senator from Minnesota (Mr. COLEMAN) were added as cosponsors of amendment No. 3614 proposed to H.R. 2419, a bill to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes.

AMENDMENT NO. 3639

At the request of Mr. HARKIN, the names of the Senator from New York (Mr. SCHUMER) and the Senator from Pennsylvania (Mr. CASEY) were added as cosponsors of amendment No. 3639 proposed to H.R. 2419, a bill to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes.

AMENDMENT NO. 3673

At the request of Mr. GREGG, the names of the Senator from Tennessee (Mr. ALEXANDER), the Senator from Colorado (Mr. ALLARD), the Senator from Texas (Mr. CORNYN), the Senator from Tennessee (Mr. CORKER), the Senator from North Carolina (Mrs. DOLE), the Senator from Texas (Mrs. HUTCHISON) and the Senator from Ohio (Mr. VOINOVICH) were added as cosponsors of amendment No. 3673 proposed to H.R. 2419, a bill to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes.

AMENDMENT NO. 3674

At the request of Mr. GREGG, the name of the Senator from Pennsylvania (Mr. SPECTER) was added as a cosponsor of amendment No. 3674 proposed to H.R. 2419, a bill to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes.

AMENDMENT NO. 3826

At the request of Mr. SANDERS, the names of the Senator from Minnesota (Mr. COLEMAN), the Senator from Minnesota (Ms. KLOBUCHAR) and the Senator from North Carolina (Mrs. DOLE) were added as cosponsors of amendment No. 3826 proposed to H.R. 2419, a bill to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes.

AMENDMENT NO. 3830

At the request of Mr. HARKIN, the names of the Senator from Maine (Ms. COLLINS) and the Senator from New Hampshire (Mr. SUNUNU) were added as cosponsors of amendment No. 3830 proposed to H.R. 2419, a bill to provide for the continuation of agricultural programs through fiscal year 2012, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. REID (for Mr. DODD (for himself, Mr. REED, Mr. SCHUMER, Mr. MENENDEZ, Mr. AKAKA, Mr. BROWN, Mr. CASEY, Mr. KENNEDY, Mr. KERRY, Mr. HARKIN, Ms. MIKULSKI, Mrs. BOXER, Mrs. MCCASKILL, Ms. KLOBUCHAR, Mrs. FEINSTEIN, and Mr. DURBIN)):

S. 2452. A bill to amend the Truth in Lending Act to provide protection to consumers with respect to certain high-cost loans, and for other purposes; to the Committee on Banking, Housing, and Urban Affairs.

Mr. DODD. Mr. President, today we are facing a crisis in the mortgage markets on a scale that has not been seen since the Great Depression: over 2 million homeowners face foreclosure at a loss of over $160 billion in hard-earned home equity; the Conference of Mayors recently reported, November 26, 2007, that they expect a decline of $1.2 trillion in property values in 2008 because of the crisis; over one out of every 5 subprime loans is currently delinquent according to First American Loan Performance, an industry research firm. These high default rates have frozen the subprime and jumbo mortgage markets and infected the capital markets to the point where central banks around the world have had to inject liquidity into the system to avoid the crisis from spreading to other segments of the market.

One of the fundamental causes of this serious crisis is abusive and predatory subprime mortgage lending. The Homeownership Preservation and Protection Act of 2007, which I am introducing today with a number of my colleagues, is designed to protect American homeowners from these practices, and prevent this disaster from happening again. The legislation will: realign the interests of the mortgage industry with borrowers to insure the availability of mortgage capital on fair terms both for the creation and sustainability of homeownership; establish new lending standards to ensure that loans are affordable and fair, and provide for adequate remedies to make sure the standards are met; and create

a transparent set of rules for the mortgage industry so that capital can safely return to the market without bad lending practices driving out the good.

The fundamental problem in the subprime market today is that the mortgage system has become extremely fragmented, with different entities responsible for selling, underwriting, originating, funding, and securitizing the loans. Too few of these entities have a stake in the long-term success of the mortgage. A recent article in The Economist, February 17, 2007, described the process succinctly:

> Banks are traditionally supposed to know a bit about the borrowers on their books. But, in many cases, their loans did not stay on their books long enough for them to care. Mortgages were written for a fee, sold to investment banks for a fee, then packaged and floated for another fee. At each link in the chain, the fees mattered more than the quality of the loans. . . .

As the GAO concluded, ''Originators [mortgage brokers and lenders] had financial incentives to increase loan volume, partially at the expense of loan quality,'' October 10, 2007. For example, mortgage originators have an incentive to get a borrower to take out a larger loan than he or she needs, and at a higher interest rate than that for which the borrower would qualify, because the originator gets a higher commission for such loans.

Comptroller of the Currency John Dugan recently described the corrosive impact of this system on underwriting standards. In a speech to the American Bankers Association October 9, 2007, Mr. Dugan said:

> When a bank makes a loan that it plans to hold, the fundamental standard it uses to underwrite the loan is that most basic of credit standards that . . . the underwriting must be strong enough to create a reasonable expectation that the loan will be repaid. But when a bank makes a loan that it plans to sell, then the credit evaluation shifts in an important way: the underwriting must be strong enough to create a reasonable expectation that the loan can be sold or put another way, the bank will underwrite to whatever standard the market will bear.

The vast majority of subprime loans were made to be sold, and, hence, their underwriting standards simply were not sufficient to ensure a reasonable prospect of repayment for too many Americans.

While the focus of much of the news coverage has been on the impact of the crisis on financial institutions and markets, I ask my colleagues to keep in mind the affect this is having on individuals who are losing their homes, and on their neighbors, who are seeing their home equity erode as foreclosures in their neighborhoods increase.

It is important to keep in mind that only about 10 percent of subprime mortgages in the past several years have been made to first time home buyers. This market has not been primarily about creating a new set of homeowners; a majority of subprime loans have been refinances. While maintaining access to subprime credit on fair terms is important, too much of the subprime market in the past several years has actually put the homes and home equity of American families at risk.

The legislation seeks to set high standards for brokers, lenders, appraisers, servicers, and Wall Street and provide for strong remedies to restore accountability to the system. Specifically, the legislation will establish new protections for all borrowers including a prohibition on steering prime borrowers to subprime loans, which the Wall Street Journal recently found was widespread in the market. The bill establishes a fiduciary duty for mortgage brokers towards borrowers. It provides for a duty of good faith and fair dealing toward borrowers for all lenders.

The bill will establish new protections for subprime borrowers and borrowers who get exotic mortgages. First and foremost, brokers and lenders will have to establish the borrowers' ability to repay the loan, including for interest-only and option ARMs. In addition, the bill prohibits prepayment penalties and YSPs on these loans, and requires that these loans provide a net tangible benefit to the borrower.

The bill will tighten the definition of high cost loans and provide increased protections for these borrowers, including a prohibition of balloon payments, financing of points and fees, prepayment penalties and yield spread premiums, YSPs.

The bill will provide strong remedies to make sure these standards are met. The bill puts more ''cops on the beat'' by allowing state attorneys general to enforce the provisions of the law, and it does not preempt State law. States should be allowed the flexibility to address new abuses as they arise.

The bill will provide for limited liability for holders of a mortgage made in violation of law, whether it is the original lender or a subsequent investment trust. Unlike current law, which puts the burden on the borrower to find the party responsible for causing the harm, the legislation allows the borrower to go directly to the current mortgage holder for a cure.

The bill will also prohibit lenders from influencing appraisers, limit the ''junk'' fees mortgage servicers can charge, and require them to credit payments promptly, require foreclosure prevention counseling or loss mitigation before a foreclosure can take place, and uuthorize the hiring of additional FBI agents to fight mortgage fraud.

In the coming months, the housing crisis is going to get worse. We will need to continue to press lenders and servicers to provide real relief for homeowners threatened with foreclosure. FHA and the GSEs will have to play an expanded role. But as we deal with the cleaning up the current crisis, let us keep in mind the need to address the underlying problems that have created the crisis, and move to address those underlying causes by passing the ''Homeownership Protection and Preservation Act.''

Finally, I want to acknowledge the work of a number of my colleagues on this issue. Senators SCHUMER, BROWN, and CASEY introduced a bill on this topic earlier this year, S. 1299, from which I took some important provisions. In addition, Senators REED and MENENDEZ both made important contributions to the deliberations leading up to the introduction of this legislation.

Mr. President, I ask unanimous consent that the text of the bill and a detailed summary be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

S. 2452

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Home Ownership Preservation and Protection Act of 2007''.

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

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Effective date and regulations.

TITLE I—HIGH-COST MORTGAGES

Sec. 101. Definitions relating to high-cost mortgages.
Sec. 102. Additional protections for HOEPA loans.

TITLE II—PROTECTIONS APPLICABLE TO SUBPRIME AND CERTAIN OTHER LOANS

Sec. 201. Truth in Lending Act amendments.

TITLE III—PROTECTIONS FOR ALL HOME LOAN BORROWERS

Sec. 301. Mortgage protections.

TITLE IV—GOOD FAITH AND FAIR DEALING IN APPRAISALS

Sec. 401. Duties of appraisers.

TITLE V—GOOD FAITH AND FAIR DEALING IN HOME LOAN SERVICING

Sec. 501. Duties of lenders and loan servicers.
Sec. 502. Real estate settlement procedures.
Sec. 503. Effective date.

TITLE VI—FORECLOSURE PREVENTION COUNSELING

Sec. 601. Foreclosure prevention counseling.

TITLE VII—REMEDIES AND ENFORCEMENT

Sec. 701. Material disclosures and violations.
Sec. 702. Right of rescission.
Sec. 703. Civil liability.
Sec. 704. Liability for monetary damages.
Sec. 705. Remedy in lieu of rescission for certain violations.
Sec. 706. Prohibition on mandatory arbitration.
Sec. 707. Lender liability.

TITLE VIII—OTHER BANKING AGENCY AUTHORITY

Sec. 801. Inclusion of all banking agencies in the regulatory authority under the Federal Trade Commission Act with respect to depository institutions.

TITLE IX—MISCELLANEOUS

Sec. 901. Authorizations.

SEC. 2. DEFINITIONS.

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

''(cc) DEFINITIONS RELATING TO HOME MORTGAGE LOANS.—

''(1) HOME MORTGAGE LOAN.—The term 'home mortgage loan' means a consumer credit transaction secured by a home, used or intended to be used as a principal dwelling, regardless of whether it is real or personal property, or whether the loan is used to purchase the home.

''(2) MORTGAGE BROKER.—The term 'mortgage broker' means a person who, for compensation or in anticipation of compensation, arranges or negotiates or attempts to arrange or negotiate home mortgage loans or commitments for such loans, refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made.

''(3) MORTGAGE ORIGINATOR.—The term 'mortgage originator' means any creditor or other person, including a mortgage broker, who, for compensation or in anticipation of compensation, engages either directly or indirectly in the acceptance of applications for home mortgage loans, solicitation of home mortgage loans on behalf of consumers, negotiation of terms or conditions of home mortgage loans on behalf of consumers or lenders, or negotiation of sales of existing home mortgage loans to institutional or noninstitutional lenders. It also includes any employee or agent of such person.

''(4) NONTRADITIONAL MORTGAGE LOAN.—The term 'nontraditional mortgage loan' means a home mortgage loan that allows a consumer to defer payment of principal or interest.

''(5) SUBPRIME MORTGAGE LOAN.—

''(A) IN GENERAL.—The term 'subprime mortgage loan' means a home mortgage loan in which the annual percentage rate exceeds the greater of the thresholds determined under subparagraph (B) or (C), as applicable.

''(B) TREASURY SECURITIES RATE SPREAD.—A home mortgage loan is a subprime mortgage loan if the difference between the annual percentage rate for the loan and the yield on United States Treasury securities having comparable periods of maturity is equal to or greater than—

''(i) 3 percentage points, if the loan is secured by a first lien mortgage or deed of trust; or

''(ii) 5 percentage points, if the loan is secured by a subordinate lien mortgage or deed of trust.

''(C) CONVENTIONAL MORTGAGE RATE SPREAD.—A home mortgage loan is a subprime mortgage loan if the difference between the annual percentage rate for the loan and the annual yield on conventional mortgages, as published by the Board of Governors of the Federal Reserve System in statistical release H.15 (or any successor publication thereto) is either equal to or greater than—

''(i) 1.75 percentage points, if the loan is secured by a first lien mortgage or deed of trust; or

''(ii) 3.75 percentage points, if the loan is secured by a subordinate lien mortgage or deed of trust.

''(D) RULE OF CONSTRUCTION.—For purposes of subparagraph (B), the difference between the annual percentage rate of a home mortgage loan and the yield on United States Treasury securities having comparable periods of maturity shall be determined using the same procedures and calculation methods applicable to loans that are subject to the reporting requirements of the Federal Home Mortgage Disclosure Act, whether or not such loan is subject to or reportable under the provisions of that Act.''.

SEC. 3. EFFECTIVE DATE AND REGULATIONS.

(a) EFFECTIVE DATE.—This Act and the amendments made by this Act shall become effective 6 months after the date of enactment of this Act, and shall apply to all transactions consummated on or after that effective date, except as otherwise specifically provided herein.

(b) REGULATIONS REQUIRED.—Not later than 6 months after the date of enactment of this Act, the Board of Governors of the Federal Reserve System shall issue in final form such regulations as are necessary to carry out this Act and the amendments made by this Act.

TITLE I—HIGH-COST MORTGAGES

SEC. 101. DEFINITIONS RELATING TO HIGH-COST MORTGAGES.

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

''(aa) HIGH-COST MORTGAGE.—

''(1) DEFINITION.—

''(A) IN GENERAL.—The term 'high-cost mortgage', and a mortgage referred to in this subsection, mean a consumer credit transaction that is secured by the principal dwelling of a consumer, other than a reverse mortgage transaction, if—

''(i) in the case of a loan secured—

''(I) by a first mortgage on such dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 8 percentage points the yield on United States Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

''(II) by a subordinate or junior mortgage on such dwelling, the annual percentage rate at consummation of the transaction will exceed by more than 10 percentage points the yield on United States Treasury securities having comparable periods of maturity on the 15th day of the month immediately preceding the month in which the application for the extension of credit is received by the creditor; or

''(ii) the total points and fees payable in connection with the loan exceed—

''(I) in the case of a loan for $20,000 or more, 5 percent of the total loan amount; or

''(II) in the case of a loan for less than $20,000, the lesser of 8 percent of the total loan amount or $1,000.

''(B) INTRODUCTORY RATES TAKEN INTO ACCOUNT.—For purposes of subparagraph (A)(i), the annual percentage rate shall be determined as—

''(i) in the case of a fixed-rate loan in which the rate of interest will not vary during the term of the loan, the interest rate in effect on the date of consummation of the transaction;

''(ii) in the case of a loan in which the rate of interest varies solely in accordance with an index, the interest rate determined by adding the index rate in effect on the date of consummation of the transaction to the maximum margin permitted at any time by the terms of the loan agreement; and

''(iii) in the case of any other loan in which the rate may vary at any time during the term of the loan for any reason, the interest charged on the loan at the maximum rate that may be charged during the term of the loan.''.

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

''(B) An increase or decrease under subparagraph (A)—

''(i) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(I) being less than 6 percentage points or greater than 10 percentage points; and

''(ii) may not result in the number of percentage points referred to in paragraph (1)(A)(i)(II) being less than 8 percentage points or greater than 12 percentage points.''.

(c) POINTS AND FEES DEFINED.—

(1) IN GENERAL.—Section 103(aa)(4) of the Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is amended—

(A) by striking ''(1)(B)'' and inserting ''(1)(A)(ii)'';

(B) by striking subparagraph (B) and inserting the following:

''(B) all compensation paid directly or indirectly by a consumer or creditor to a mortgage broker or from any source, including a mortgage broker that originates a loan in the name of the broker in a table funded transaction;'';

(C) in subparagraph (C)(iii), by striking ''and'' at the end;

(D) by redesignating subparagraph (D) as subparagraph (G); and

(E) by inserting after subparagraph (C) the following:

''(D) premiums or other charges payable at or before consummation of the loan for any credit life, credit disability, credit unemployment, or credit property insurance, or any other accident, loss-of-income, life, or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor;

''(E) the maximum prepayment fees and penalties which may be charged or collected under the terms of the loan documents;

''(F) all prepayment fees or penalties that are incurred by the customer, if the loan refinances a previous loan made or currently held by the same creditor or an affiliate of the creditor; and''.

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

(A) by redesignating paragraph (5) as paragraph (7); and

(B) by inserting after paragraph (4) the following:

''(5) CALCULATION OF POINTS AND FEES FOR OPEN-END LOANS.—In the case of a loan under an open-end credit plan, points and fees shall be calculated, for purposes of this section and section 129, by adding the total points and fees known at or before closing, including the maximum prepayment penalties which may be charged or collected under the terms of the loan documents, plus the minimum additional fees that the consumer would be required to pay to draw down an amount equal to the total credit line.''.

(d) HIGH-COST MORTGAGE LENDER.—Section 103(f) of the Truth in Lending Act (15 U.S.C. 1602(f)) is amended by striking the last sentence and inserting the following: ''Any person who originates or brokers 2 or more mortgages referred to in subsection (aa) in any 12-month period, any person who originates 1 or more such mortgages through a mortgage broker in any 12-month period or in connection with a table funded transaction involving such a mortgage, and any person to whom the obligation is initially assigned at or after settlement, shall be considered to be a creditor for purposes of this title.''.

(e) BONA FIDE DISCOUNT LOAN DISCOUNT POINTS AND PREPAYMENT PENALTIES.—Section 103(aa) of the Truth in Lending Act (15 U.S.C. 1602(aa)) is amended by inserting after paragraph (5), as added by this Act, the following:

''(6) BONA FIDE DISCOUNT POINTS.—

''(A) IN GENERAL.—For the purpose of determining the amount of points and fees under this subsection—

''(i) not more than 2 bona fide discount points payable by the consumer in connection with the mortgage shall be excluded, but only if the interest rate from which the interest rate on the mortgage will be discounted does not exceed by more than 1 percentage point the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater; and

''(ii) unless 2 bona fide discount points have been excluded under subparagraph (A), not more than 1 bona fide discount point payable by the consumer in connection with the mortgage shall be excluded, but only if the interest rate from which the interest rate on the mortgage will be discounted does not exceed by more than 2 percentage points the required net yield for a 90-day standard mandatory delivery commitment for a reasonably comparable loan from either the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, whichever is greater.

''(B) DEFINITION.—For purposes of subparagraph (A), the term 'bona fide discount points' means loan discount points which are knowingly paid by the consumer for the purpose of reducing, and which in fact result in a bona fide reduction of, the interest rate or time-price differential applicable to the mortgage.

''(C) EXCEPTION FOR INTEREST RATE REDUCTIONS INCONSISTENT WITH INDUSTRY NORMS.—Subparagraph (A) shall not apply to discount points used to purchase an interest rate reduction, unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions.''.

SEC. 102. ADDITIONAL PROTECTIONS FOR HOEPA LOANS.

(a) NO PREPAYMENT PENALTIES.—Section 129(c) of the Truth in Lending Act (15 U.S.C. 1639(c)) is amended—

(1) by striking paragraph (2); and

(2) in paragraph (1)—

(A) by striking ''(1) IN GENERAL.—''; and

(B) by redesignating subparagraphs (A) and (B) as paragraphs (1) and (2), respectively, and moving the margins 2 ems to the left.

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

''(e) NO BALLOON PAYMENTS.—No high-cost mortgage may contain a scheduled payment that is more than twice as large as the average of any earlier required scheduled payments, except that this subsection shall not apply when the payment schedule is adjusted to the seasonal or irregular income of the consumer.''.

(c) OTHER PROHIBITIONS ON HIGH-COST MORTGAGES.—Section 129 of the Truth in Lending Act (15 U.S.C. 1639) is amended by adding at the end the following:

''(m) NO YIELD SPREAD PREMIUMS.—No person may provide, and no mortgage originator may receive, directly or indirectly, any compensation for originating a home mortgage loan that is more costly than that for which the consumer qualifies, or that is based on, or varies with, the terms of any home mortgage loan.

''(n) ACCELERATION OF DEBT.—No high-cost mortgage may contain a provision which permits the creditor, in its sole discretion, to accelerate the indebtedness, other than in any case in which repayment of the loan has been accelerated by default, pursuant to a due-on-sale provision, or for a breach of a material provision of the loan documents unrelated to the payment schedule.

''(o) RESTRICTION ON FINANCING POINTS AND FEES.—No creditor may, directly or indirectly, finance, in connection with any high-cost mortgage—

''(1) any prepayment fee or penalty payable by the consumer in a refinancing transaction, if the creditor or an affiliate of the creditor is the noteholder of the note being refinanced; or

''(2) any points or fees as defined in section 103(aa)(4).

''(p) PROHIBITION ON EVASIONS, STRUCTURING OF TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—A creditor may not take any action in connection with a high-cost mortgage—

''(1) to structure a loan transaction as an open-end credit plan or another form of loan for the purpose and with the intent of evading the provisions of this title; or

''(2) to divide any loan transaction into separate parts for the purpose and with the intent of evading the provisions of this title.

''(q) MODIFICATION AND DEFERRAL FEES PROHIBITED.—A creditor may not charge a consumer any fee to modify, renew, extend, or amend a high-cost mortgage, or to defer any payment due under the terms of such mortgage, unless the modification, renewal, extension, or amendment results in a lower annual percentage rate on the mortgage for the consumer, and then only if the fee is bona fide and reasonable.

''(r) NET TANGIBLE BENEFIT.—In accordance with regulations prescribed by the Board, no originator may make, provide, or arrange a high-cost mortgage loan that involves a refinancing of a prior existing home mortgage loan, unless the new loan will provide a net tangible benefit to the consumer.''.

TITLE II—PROTECTIONS APPLICABLE TO SUBPRIME AND CERTAIN OTHER LOANS

SEC. 201. TRUTH IN LENDING ACT AMENDMENTS.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by inserting after section 129 the following new section:

''SEC. 129A. PROTECTIONS FOR SUBPRIME AND NONTRADITIONAL HOME LOANS.

''(a) ASSESSMENT OF ABILITY TO PAY.—

''(1) IN GENERAL.—

''(A) IN GENERAL.—Before entering into or otherwise facilitating a subprime or nontraditional mortgage loan, each mortgage originator shall verify the reasonable ability of the borrower to pay the principal and interest on the loan and any real estate taxes and homeowner insurance fees and premiums.

''(B) CONSIDERATIONS.—A determination under subparagraph (A) shall include consideration of—

''(i) the income of the borrower;

''(ii) the credit history of the borrower;

''(iii) the current obligations and employment status of the borrower;

''(iv) the debt-to-income ratio of the monthly gross income of the borrower, inclusive of all scheduled or otherwise significant debt payments and total monthly housing payments, including taxes, property and private mortgage insurance, any required homeowner or condominium fees, and any subordinate mortgages, including those that will be made contemporaneously to the same borrower;

''(v) the residual income of the borrower; and

''(vi) other available financial resources, other than the equity of the borrower in the principal dwelling that secures or would secure the loan.

''(2) VARIABLE MORTGAGE RATES.—In the case of a subprime or nontraditional mortgage loan, with respect to which the applicable rate of interest may vary, for purposes of paragraph (1), the ability to pay shall be determined based on the monthly payment that could be due from the borrower, using as assumptions—

''(A) the fully indexed interest rate;

''(B) a repayment schedule which achieves full amortization over the life of the loan, assuming no default by the borrower;

''(C) for products that permit negative amortization, the initial loan amount plus any balance increase that may accrue from the negative amortization provision;

''(D) that the loan is to be repaid in substantially equal monthly amortizing payments for principal and interest over that period of time which would be permitted after the consumer has made lower payments, as permitted under the terms of the loan, and which includes any additions to principal that will result from such permitted lower payments, with no balloon payment, unless the loan contract requires a more rapid repayment schedule to be used in the calculation; and

''(E) the reasonably foreseeable capacity of the borrower to make payments, assuming market changes as to the contract index rate over the period of the loan, using, to make such assessment, a credible market rate determined according to regulations issued by the Board, which regulations shall require reasonable market expectations to be a factor.

''(3) REBUTTABLE PRESUMPTION.—

''(A) IN GENERAL.—For purposes of this subsection there is a rebuttable presumption that a mortgage was made without regard to repayment ability if, at the time at which the loan was consummated, the total monthly debts of the borrower, including total monthly housing payments, taxes, property, and private mortgage insurance, any required homeowner or condominium fees, and any subordinate mortgages, including those that will be made contemporaneously to the same borrower, exceed 45 percent of the monthly gross income of the borrower.

''(B) REBUTTAL.—To rebut the presumption of inability to repay under subparagraph (A) the creditor shall, at minimum, determine and consider the residual income of the borrower after payment of current expenses and proposed home loan payments, except that no presumption of ability to make the scheduled payments to repay the obligation shall arise solely from the fact that, at the time at which the loan is consummated, the total monthly debts of the borrower (including amounts owed under the loan) does not exceed 45 percent of the monthly gross income of the borrower.

''(b) REQUIREMENT OF TAX AND INSURANCE ESCROWS.—No subprime or nontraditional mortgage loan may be arranged, approved, or made without requiring escrow of tax and insurance installments calculated in accordance with the requirements of section 10 of the Real Estate Settlement Procedures Act of 1974, and regulations promulgated pursuant thereto, and mortgage insurance premiums, if any.

''(c) PROHIBITION ON PREPAYMENT PENALTIES.—No subprime or nontraditional mortgage loan may contain a provision that requires a consumer to pay a penalty for paying all or part of the principal before the date on which it is due.

''(d) PROHIBITION ON YIELD-SPREAD PREMIUMS.—No person may provide, and no mortgage originator may receive, directly or indirectly, any compensation for originating a subprime or nontraditional mortgage loan that is more costly than that for which the consumer qualifies, or that is based on, or varies with, the terms (other than the amount of loan principal) of any home mortgage loan.

''(e) NET TANGIBLE BENEFIT.—

''(1) IN GENERAL.—In accordance with regulations prescribed by the Board, no originator may make, provide, or arrange a subprime or nontraditional mortgage loan that involves a refinancing of a prior existing home mortgage loan, unless the new loan will provide a net tangible benefit to the consumer.

''(2) CERTAIN LOANS PROVIDING NO NET TANGIBLE BENEFIT.—For purposes of paragraph (1), a mortgage loan that involves refinancing of a prior existing mortgage loan shall not be considered to provide a net tangible benefit to the borrower if the costs of the refinanced loan, including points, fees, and other charges, exceed the amount of any newly advanced principal, less the points, fees, and other charges, without any corresponding changes in the terms of the refinanced loan that are advantageous to the borrower.''.

TITLE III—PROTECTIONS FOR ALL HOME LOAN BORROWERS

SEC. 301. MORTGAGE PROTECTIONS.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by inserting after section 129A, as added by this Act, the following new section:

''SEC. 129B. PROTECTIONS FOR ALL HOME LOANS.

''(a) DUTIES OF ALL MORTGAGE ORIGINATORS.—Each mortgage originator shall, with respect to each home mortgage loan and, in addition to requirements under other applicable provisions of Federal or State law—

''(1) safeguard and account for any money handled for the borrower;

''(2) follow reasonable and lawful instructions from the borrower;

''(3) act with reasonable skill, care, and diligence;

''(4) act in good faith and with fair dealing in any transaction, practice, or course of business in connection with the originating of any home mortgage loan; and

''(5) make reasonable efforts to secure a home mortgage loan that is appropriately advantageous to the borrower, considering all of the circumstances, including the product type, rates, charges, and repayment terms of the loan.

''(b) DUTIES OF MORTGAGE BROKERS.—Each mortgage broker shall with respect to each home mortgage loan be deemed to have a fiduciary relationship with the borrower, and, in addition to duties imposed by other applicable provisions of Federal or State law, shall—

''(1) act in the best interest of the borrower and in the utmost good faith toward the borrower, and refrain from compromising the rights or interests of the borrower in favor of the rights or interests of another, including a right or interest of the mortgage broker; and

''(2) clearly disclose to the borrower, not later than 3 days after receipt of the loan application, all material information that might reasonably affect the rights, interests, or ability of the borrower to receive the borrower's intended benefit from the home mortgage loan, including total compensation that the broker would receive from any of the loan options that the broker presents to the borrower.

''(c) PROHIBITION ON STEERING.—

''(1) IN GENERAL.—In connection with a home mortgage loan, a mortgage originator may not steer, counsel, or direct a consumer to a loan with rates, charges, principal amount, or prepayment terms that are more costly than that for which the consumer qualifies.

''(2) DUTIES TO CONSUMERS.—If unable to suggest, offer, or recommend to a consumer a home mortgage loan that is not more expensive than that for which the consumer qualifies, a mortgage originator shall disclose to the consumer—

''(A) that the creditor does not offer a home mortgage loan that is not more expensive than that for which the consumer qualifies, but that other creditors may offer such a loan; and

''(B) the reasons that the products and services offered by the mortgage originator are not available to or reasonably advantageous for the consumer.

''(3) PROHIBITED CONDUCT.—In connection with a home mortgage loan, a mortgage originator may not—

''(A) mischaracterize the credit history of a consumer or the home loans available to a consumer;

''(B) mischaracterize or suborn mischaracterization of the appraised value of the property securing the extension of credit; and

''(C) if unable to suggest, offer, or recommend to a consumer a loan that is not more expensive than that for which the consumer qualifies, discourage a consumer from seeking a home mortgage loan from another creditor or with another mortgage originator.

''(d) REQUIRED DOCUMENTATION.—

''(1) IN GENERAL.—With respect to any home mortgage loan, a mortgage originator shall base its determination of the ability of a consumer to pay on—

''(A) documentation of all sources of income verified by tax returns, payroll receipts, bank records, or the best and most appropriate form of documentation available, subject to such requirements and exceptions as determined appropriate by the Board; and

''(B) the debt-to-income ratio and the residual income of the consumer after payment of current expenses and proposed home loan payments.

''(2) LIMITATION.—A statement provided by a consumer of the income and financial resources of the consumer, without other documentation referred to in paragraph (1), is not sufficient verification for purposes of assessing the ability of the consumer to pay.

''(e) LIMITATIONS ON YIELD-SPREAD PREMIUMS.—

''(1) IN GENERAL.—Except as provided in paragraph (2), no person may provide, and no mortgage originator may receive, directly or indirectly, any compensation for originating a home mortgage loan that is more costly than that for which the consumer qualifies, or that is based on, or varies with, the terms of any home mortgage loan (other than the amount of loan principal).

''(2) LIMITED EXCEPTION FOR NO-COST LOANS.—Notwithstanding paragraph (1), in a home mortgage loan, other than a high-cost mortgage loan, a subprime mortgage loan, or a nontraditional mortgage loan, a mortgage broker may receive compensation in the form of an increased rate, but only if—

''(A) the mortgage broker receives no other compensation, however denominated, directly or indirectly, from the consumer, creditor, or other mortgage originator;

''(B) the loan does not include discount points, origination points, or rate reduction points, however denominated, or any payment reduction fee, however denominated;

''(C) the loan does not include a prepayment penalty; and

''(D) there are no other closing costs associated with the loan, except for fees to government officials or amounts to fund escrow accounts for taxes and insurance.

''(f) RECOMMENDED DEFAULT.—No creditor shall recommend or encourage default on an existing loan or other debt prior to and in connection with the closing or planned closing of a mortgage loan that refinances all or any portion of such existing loan or debt.

''(g) EFFECT OF FORECLOSURE ON PREEXISTING LEASE.—

''(1) IN GENERAL.—Notwithstanding any other provision of law, in the case of any foreclosure with respect to a home mortgage loan entered into after the date of enactment of this Act, any successor in interest in such property pursuant to the foreclosure shall assume such interest subject to—

''(A) the provision, by the successor in interest, of a notice to vacate to any bona fide tenant at least 90 days before the effective date of the notice to vacate; and

''(B) the rights of any bona fide tenant, as of the date of such notice of foreclosure—

''(i) under any bona fide lease entered into before the notice of foreclosure to occupy the premises until the end of the remaining term of the lease; or

''(ii) without a lease or with a lease terminable at will under State law, subject to the receipt by the tenant of the 90-day notice under subparagraph (A).

''(2) BONA FIDE LEASE OR TENANCY.—For purposes of this section, a lease or tenancy shall be considered bona fide only if—

''(A) the mortgagor under the contract is not the tenant;

''(B) the lease or tenancy was the result of an arms-length transaction; or

''(C) the lease or tenancy requires the receipt of rent that is not substantially less than fair market rent for the property.''.

TITLE IV—GOOD FAITH AND FAIR DEALING IN APPRAISALS

SEC. 401. DUTIES OF APPRAISERS.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by inserting after section 129B, as added by this Act, the following new section:

''SEC. 129C. DUTIES OF APPRAISERS.

''(a) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) APPRAISER.—The term 'appraiser' means a person who—

''(A) is 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.

''(2) QUALIFYING BOND.—The term 'qualifying bond' means a bond equal to not less than 1 percent of the aggregate value of all homes appraised by an appraiser of real property in connection with a home mortgage loan in the calendar year preceding the date of the transaction, with respect to which—

''(A) the bond shall inure first to the benefit of the homeowners who have claims against the appraiser under this title or any other applicable provision of law, and second to the benefit of originating creditors that complied with their duty of good faith and fair dealing in accordance with this title; and

''(B) any assignee or subsequent transferee or trustee shall be a beneficiary of the bond, only if the originating creditor qualified for such treatment.

''(b) STANDARD OF CARE.—Each appraiser shall, in addition to the duties imposed by otherwise applicable provisions of Federal or State law, with respect to each home mortgage loan in which the appraiser is involved—

''(1) act with reasonable skill, care, diligence, and in accordance with the highest standards; and

''(2) act in good faith and with fair dealing in any transaction, practice, or course of business associated with the transaction.

''(c) DUTIES OF APPRAISERS.—

''(1) OBJECTIVE APPRAISALS.—All appraisals carried out by an appraiser shall be accurate

and reasonable. An appraiser shall have no direct or indirect interest in the property to be appraised, the real estate transaction prompting such appraisal, or the home loan involved in such transaction.

''(2) BOND REQUIREMENT.—No appraiser may charge, seek, or receive compensation for an appraisal unless the appraisal is covered by a qualifying bond.

''(3) NO TARGET VALUES.—No lender or loan servicer may, with respect to a home mortgage loan, in any way—

''(A) seek to influence an appraiser or otherwise to encourage a targeted value in order to facilitate the making or pricing of the home mortgage loan; or

''(B) select an appraiser on the basis of an expectation that such appraiser would provide a targeted value in order to facilitate the making or pricing of the home mortgage loan.

''(4) PROHIBITION ON CERTAIN DISCLOSURES.—Neither the appraisal order nor any other communication in any form by an appraiser may include the requested loan amount or any estimate of value for the property to serve as collateral, either express or implied.

''(d) APPRAISAL REPORT.—In any case in which an appraisal is performed in connection with a home mortgage loan, the lender or loan servicer shall provide a copy of the appraisal report to an applicant for a home mortgage loan, whether credit is granted, denied, or the application was withdrawn. The first copy of this report shall be provided to the applicant without charge.

''(e) REMEDIES.—In addition to other remedies, in any action for a violation of this section, the following shall apply:

''(1) REQUIRED MODIFICATION.—If a retrospective appraisal determines that the appraisal upon which the home loan was based exceeded the true market value by 10 percent or more, the holder of the loan shall modify the loan and recast the loan ab initio to a loan amount that is at the same loan-to-value which the original loan purported to be. All payments made prior to the recasting of such loan shall be applied to the reduced loan amount.

''(2) AGENCY ABILITY TO MODIFY TRUE VALUE TOLERANCE LEVEL.—If a consumer has a right of action or a defense against the holder of the home loan when the appraisal upon which the home loan was based exceeds the true market value of the home by 10 percent or more, the regulatory agency which oversees appraisers in the jurisdiction in which the collateral is located has the authority to issue rules which permit the 10 percent tolerance level established in this paragraph to deviate by no more than 2 percent where local conditions warrant.

''(3) COLLECTION FROM APPRAISER'S QUALIFYING BOND.—A consumer awarded remedies pursuant to this section shall have the right to collect such remedies from the appraiser's qualifying bond.

''(f) CIVIL LIABILITY.—

''(1) IN GENERAL.—Any appraiser who fails to comply with any requirement of this section with respect to a borrower designated in a home mortgage loan contract, is liable to such borrower in an amount equal to the sum of—

''(A) any actual damages sustained by such borrower as a result of the failure;

''(B) an amount not less than $5,000; or

''(C) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

''(2) JURISDICTION.—Any action by a borrower for a failure to comply with the requirements of this section may be brought in any United States district court, or in any other court of competent jurisdiction, not later than 3 years from the date of the occurrence of such violation. This subsection does not bar a person from asserting a violation of this section in an action to collect the debt owed on a home mortgage loan, or foreclose upon the home securing a home mortgage loan, or to stop a foreclosure upon that home, which was brought more than 3 years after the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action. An action under this section does not create an independent basis for removal of an action to a United States district court.

''(3) STATE ATTORNEY GENERAL ENFORCEMENT.—An action to enforce a violation of this section may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. An action under this section does not create an independent basis for removal of an action to a United States district court.''.

TITLE V—GOOD FAITH AND FAIR DEALING IN HOME LOAN SERVICING

SEC. 501. DUTIES OF LENDERS AND LOAN SERVICERS.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended by inserting after section 129C, as added by this Act, the following new section:

''SEC. 129D. DUTIES OF LENDERS AND LOAN SERVICERS.

''(a) STANDARD OF CARE.—

''(1) AGENCY RELATIONSHIP.—In the case of any home loan serviced by a loan servicer on behalf of a lender, the loan servicer shall be deemed an agent of that lender, and shall be subject to all requirements of agents otherwise applicable under Federal or State law.

''(2) FAIR DEALING.—Each lender and loan servicer shall, in addition to the duties imposed by otherwise applicable provisions of Federal or State law, with respect to each home mortgage loan, including any home mortgage loan in default or in which the homeowner has filed for bankruptcy—

''(A) act with reasonable skill, care, diligence, and in accordance with the highest standards; and

''(B) act in good faith and with fair dealing in any transaction, practice, or course of business associated with the home mortgage loan.

''(b) RULES FOR ASSESSMENT OF FEE.—

''(1) IN GENERAL.—No home mortgage loan contract may require, nor may any lender or loan servicer assess or receive, any fees or charges other than interest, late fees as specifically authorized in this section, or fees assessed for nonsufficient funds, and charges allowed pursuant to subsection (i)(1)(B), until the home mortgage loan is the subject of a foreclosure proceeding and the debt on such loan has been accelerated.

''(2) FEE LIMITATIONS.—Any permissible fee or charge described under paragraph (1) shall be—

''(A) reasonable;

''(B) for services actually rendered; and

''(C) specifically authorized by the terms of the home mortgage loan contract and State law.

''(3) ASSESSMENT AND DISCLOSURE.—

''(A) IN GENERAL.—Any permissible fee or charge described under paragraph (1) shall be—

''(i) assessed not later than 30 days after the date on which the fee was accrued; and

''(ii) explained clearly and conspicuously in the next monthly accounting statement provided to the borrower designated in the home mortgage loan contract.

''(B) FAILURE TO COMPLY.—Failure by a lender or loan servicer to comply with the requirements set forth under subparagraph (A) shall result in the waiver of the fee.

''(4) REQUIRED STATEMENTS.—Each month a lender or loan servicer shall provide to each borrower designated in a home mortgage loan contract entered into by such lender or loan servicer a periodic statement that clearly and in plain english explains—

''(A) the application of the prior month's payment by the borrower, including the allocation of the payment to interest, principal, escrow, and fees;

''(B) the status of the escrow account held on behalf of the borrower, including the payments into and from the escrow account; and

''(C) the assessment of fees accruing in the previous month, including the reason that such fee accrued and the date such fee accrued.

''(c) MAXIMUM ALLOWABLE LATE FEES CHARGED AFTER LOAN CLOSING.—

''(1) IN GENERAL.—No lender or loan servicer may impose a charge or fee for late payment of any amount due on a home mortgage loan—

''(A) unless the home mortgage loan contract specifically authorizes the charge or fee;

''(B) in an amount in excess of 5 percent of the amount of the payment past due;

''(C) before the end of the 15-day period after the date the payment is due, or in the case of a home mortgage loan on which interest on each installment is paid in advance, before the end of the 30-day period after the date the payment is due; or

''(D) more than once with respect to a single late payment.

''(2) RULE OF CONSTRUCTION.—For purposes of this subsection, payments on any amount due on a home mortgage loan shall be applied first to current installments, then to delinquent payments, and then to delinquency charges.

''(3) COORDINATION WITH SUBSEQUENT LATE FEES.—If a home loan mortgage payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to a late fee or delinquency charge assessed on an earlier payment, no late fee or delinquency charge may be imposed on such payment.

''(d) PROMPT CREDITING OF PAYMENTS REQUIRED.—Each home loan mortgage payment amount received by a lender or a loan servicer shall be accepted and credited on the date received. Such payments shall be credited to interest and principal due on the home mortgage loan before crediting the payment to taxes, insurance, or fees.

''(e) COLLATERAL PROTECTION INSURANCE.—

''(1) IN GENERAL.—A lender or loan servicer may not charge any borrower designated in a home mortgage loan contract for collateral protection insurance, unless—

''(A) the home mortgage loan contract requires the borrower to maintain insurance on the collateral and clearly delineates—

''(i) the terms and conditions for imposition of and payment of the collateral;

''(ii) that such insurance may not protect the interests of the borrower and may be substantially more expensive than insurance that the borrower could purchase independently; and

''(iii) that the borrower will be charged for the cost of the insurance;

''(B) the lender or loan servicer makes every effort to avoid the necessity of requiring collateral protection insurance, including at least written notice and telephone communications with the borrower and the insurance agent of record regarding the—

''(i) obligation of the borrower to maintain property insurance; and

''(ii) additional cost to the borrower on a monthly basis if collateral protection insurance is required;

''(C) clear notice is received by the borrower at least 15 days in advance of the charge for collateral protection insurance, including—

''(i) notice that the—

''(I) placement of the insurance is imminent;

''(II) costs of the insurance will be paid by the borrower; and

''(III) the insurance will not protect the borrower from loss;

''(ii) notice of the amount of the new monthly payment; and

''(iii) instructions on the steps that the borrower may take to avoid such charge; and

''(D) charges for such insurance are bona fide and reasonable.

''(2) PROHIBITION.—In no event is collateral protection insurance permitted when a lender or loan servicer is collecting fees in escrow from the borrower for the payment of property taxes and insurance, unless the borrower has had his or her insurance cancelled for some reason other than non-payment of the premium.

''(3) NOTICE OF CHARGE.—After a charge for the purchase of collateral protection insurance has been issued by a lender or loan servicer, notice of the new monthly payment requirements shall be delivered to the borrower at least 15 days prior to the first increased payment—

''(A) explaining the imposition of the new charges for such insurance; and

''(B) providing information on what the borrower can do to obviate the need for such insurance.

''(f) OBLIGATIONS OF LENDER OR LOAN SERVICER TO HANDLE ESCROW FUNDS.—A lender or loan servicer shall make all payments from the escrow account held for the borrower designated in a home mortgage loan contract for insurance, taxes, and other charges with respect to the property secured by such contract in a timely manner to ensure that no late penalties are assessed and that no other negative consequences result, regardless of whether the loan is delinquent, unless—

''(1) there are not sufficient funds in the account of such borrower to cover the payments; and

''(2) the lender or loan servicer has a reasonable basis to believe that recovery of the funds will not be possible.

''(g) INFORMATION EXCHANGE AND DISPUTE REQUIREMENTS.—

''(1) MANDATORY RESPONSE TO BORROWERS' REQUESTS.—

''(A) IN GENERAL.—A lender or loan servicer shall respond to any request for information about a home mortgage loan or for resolution of any dispute involving a home mortgage loan submitted by a borrower designated in a home mortgage loan contract entered into by such lender or loan servicer.

''(B) TIMING OR RESPONSE.—A response required under subparagraph shall occur—

''(i) without cost to the requesting borrower; and

''(ii) not later than 10 days after the receipt of such request.

''(C) SCOPE OF OBLIGATION.—The scope of the response requirement set forth in subparagraph (A), includes—

''(i) providing—

''(I) the status of the borrowers account, including whether the account is current, or if not, the date the account went into default;

''(II) the current balance due on the home mortgage loan of the borrower, including the principal due, an explanation of the escrow balance, and whether there are any escrow deficiencies or shortages;

''(III) a full payment history of the borrower, which shows in a clear and easily understandable manner all of the activity on the home mortgage loan of the borrower since the origination of the loan, including the escrow account and the application of payments; and

''(IV) a copy of the original note and security instrument;

''(ii) correcting errors relating to the allocation of payments made by the borrower, final balances for purposes of paying off the loan or avoiding foreclosure, and other lender or loan servicer obligations;

''(iii) providing the identity, address, and other relevant information about the owner or assignee of the home mortgage loan; and

''(iv) providing a telephone number on each regular account statement that gives the borrower access to a live person with the information and authority to answer questions and resolve issues.

''(2) NO SHARING OF INFORMATION.—During the 90-day period beginning on the date of the receipt of a request from a borrower under paragraph (1), a lender or loan servicer may not provide information to any reporting agency regarding any overdue payment, or other default on the home mortgage loan, by such borrower to any consumer reporting agency (as such term is defined in section 603(f) of the Fair Credit Reporting Act).

''(3) MAINTENANCE OF RECORDS.—A lender or loan servicer shall maintain written and electronic records of the handling of any oral request made by a borrower under this subsection.

''(h) MANDATORY LOSS MITIGATION.—

''(1) IN GENERAL.—A lender or loan servicer shall not initiate a foreclosure of a home mortgage loan unless that lender or loan servicer has made a good faith review of the financial situation of the borrower designated in such home mortgage loan contract and has offered, whenever feasible, a repayment plan, forbearance, loan modification, or other option to assist the borrower in bringing his or her delinquent account into arrears. In the event that such options are not feasible, the lender or loan servicer shall refer the borrower to a housing counseling agency approved by the Secretary of Housing and Urban Development under section 106(d) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(d)).

''(2) REPORTS ON LOSS MITIGATION ACTIVITIES.—

''(A) IN GENERAL.—Each servicer shall report to the Board once every 3 months on the extent and results of its loss mitigation activities.

''(B) FORM AND CONTENT.—The Board shall prescribe, by regulation, the form and content of the reports required by this paragraph which shall include—

''(i) categories of measures that result in modifications of loan provisions, including payment schedules, loan principle, and loan interest;

''(ii) forebearance agreements;

''(iii) acceptance of a reduced amount in satisfaction of the loan;

''(iv) assumption of the loan;

''(v) pre-foreclosure sales; and

''(vi) deeds in lieu of foreclosure, and foreclosures.

''(C) BASIS.—Data required by this paragraph shall be reported on a servicer and lender basis.

''(D) PUBLIC AVAILABILITY.—The Board shall make data received under this paragraph publicly available, and shall annually report to Congress on servicer loss mitigation activities.

''(3) FAILURE TO COMPLY.—Failure by a lender or loan servicer to comply with the requirements under paragraph (1) shall constitute a defense to any foreclosure.

''(i) PAYOFF STATEMENTS.—

''(1) PROHIBITION ON FEES.—

''(A) IN GENERAL.—No lender or loan servicer (or any third party acting on behalf of such lender or loan servicer) may charge a fee for transmitting to any borrower the amount due to pay off the outstanding balance on the home mortgage loan of such borrower.

''(B) EXCEPTION.—After a lender or loan servicer (or any third party acting on behalf of such lender or loan servicer) has provided the information described in subparagraph (A) without charge on 4 occasions during a calendar year, the lender or loan servicer (or any third party acting on behalf of such lender or loan servicer) may thereafter charge a reasonable fee for providing such information during the remainder of the calendar year.

''(2) TIMING.—The information described in subparagraph (A) shall be provided to the borrower within a reasonable period of time but in any event not more than 5 business days after the receipt of the request by the lender or loan servicer.

''(j) CIVIL LIABILITY.—

''(1) IN GENERAL.—Any lender or loan servicer who fails to comply with any requirement of this section with respect to a borrower designated in a home mortgage loan contract, is liable to such borrower in an amount equal to the sum of—

''(A) any actual damages sustained by such borrower as a result of the failure;

''(B) an amount not less than $5,000; or

''(C) in the case of any successful action to enforce the foregoing liability the costs of the action, together with a reasonable attorney's fee as determined by the court.

''(2) JURISDICTION.—Any action by a borrower for a failure to comply with the requirements of this section may be brought in any United States district court, or in any other court of competent jurisdiction, not later than 3 years from the date of the occurrence of such violation. This subsection does not bar a person from asserting a violation of this section in an action by a lender or loan servicer to collect the debt owed on a home mortgage loan, or foreclose upon the home securing a home mortgage loan, or to stop a foreclosure upon that home, which was brought more than 3 years after the date of the occurrence of the violation as a matter of defense by recoupment or set-off in such action. An action under this section does not create an independent basis for removal of an action to a United States district court.

''(3) STATE ATTORNEY GENERAL ENFORCEMENT.—An action to enforce a violation of this section may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. An action under this section does not create an independent basis for removal of an action to a United States district court.

''(k) DEFINITIONS.—In this section, the following definitions shall apply:

''(1) LENDER.—The term 'lender' has the same meaning as in section 3500.2 of title 24, Code of Federal Regulations, as in effect on the date of enactment of this section.

''(2) LOAN SERVICER.—The term 'loan servicer' has the same meaning as the term 'servicer' in section 6(i)(2) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(i)(2)).''.

SEC. 502. REAL ESTATE SETTLEMENT PROCEDURES.

Section 6(b)(3) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605(b)(3)) is amended by adding at the end the following new subparagraph:

''(H) A statement explaining—

''(i) whether the account of the borrower is current, or if the account is not current, an explanation of the reason and date the account went into default;

''(ii) the current balance due on the loan, including the principal due, an explanation of the escrow balance, and whether there are any escrow deficiencies or shortages; and

''(iii) a full payment history of the borrower which shows in a clear and easily understandable manner, all of the activity on the home mortgage loan since the origination of the loan or the prior transfer of servicing, including the escrow account, and the application of payments.''.

SEC. 503. EFFECTIVE DATE.

This title and the amendments made by this title shall become effective 90 days after the date of enactment of this Act, and shall apply to loan servicers and loan servicing activities on and after that effective date.

TITLE VI—FORECLOSURE PREVENTION COUNSELING

SEC. 601. FORECLOSURE PREVENTION COUNSELING.

Section 106(d)(6) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(d)(6)) is amended to read as follows:

''(6) FORECLOSURE PREVENTION COUNSELING.—

''(A) NOTIFICATION AT TIME OF SETTLEMENT OF AVAILABILITY OF COUNSELING UPON DELINQUENCY.—

''(i) IN GENERAL.—At the time of settlement of any real estate transaction involving a qualified mortgage, and together with the final signed loan documents, a lender or loan servicer shall provide to each eligible homeowner a plain language statement in conspicuous 16-point type or larger which shall include the following:

''(I) COUNSELING STATEMENT.—A counseling statement that reads as follows:

'If you are more than 30 days late on your mortgage payments, your lender or loan servicer shall notify you of housing counseling agencies approved by the Secretary of Housing and Urban Development that may be able to assist you. Before you miss another mortgage payment, you are strongly encouraged to contact your lender or loan servicer or 1 of these agencies for assistance. If you are more than 60 days late on your mortgage payments, your lender or loan servicer shall send you a second notification containing this information. In addition, if you are more than 60 days late on your mortgage payment, your lender or loan servicer shall notify an approved housing counseling agency so that such agency can contact you regarding any assistance it may be able to provide.

'You can also choose a housing counseling agency from the list provided with this statement to assist you. By calling 1 of these approved housing counseling agencies and signing an authorization form, your agency of choice will notify your lender or loan servicer of your decision.'.

''(II) COUNSELING AGENCY LISTING.—A listing of at least 5 national, State and local housing counseling agencies approved by the Secretary. It is the responsibility of the lender or loan servicer to ensure that—

''(aa) if fewer than 5 approved housing counseling agencies serve the area where the eligible homeowner is located, all available housing counseling agencies in that area shall be listed; and

''(bb) the list shall include options of housing counseling agencies that provide in-person counseling, as well as telephone counseling.

''(ii) NOTICE.—Any notice required to be sent pursuant to this subparagraph shall be sent by first class mail to the last known address of the eligible homeowner and if different, to the residence which is the subject of the mortgage. The notice shall also be sent by registered or certified mail.

''(B) NOTIFICATION OF AVAILABILITY OF COUNSELING UPON DELINQUENCY AFTER 60 DAYS.—

''(i) IN GENERAL.—Before a lender or loan servicer accelerates the maturity of a mortgage obligation, commences legal action, including mortgage foreclosure to recover under the obligation, or takes possession of a security of the mortgage debtor for the mortgage obligation, the lender or loan servicer is required to give notice to an eligible homeowner in conspicuous 16-point type or larger which shall include the following:

''(I) HOUSING COUNSELING INFORMATION IN NOTICE FORECLOSURE STATEMENT.—A foreclosure notice that includes the following statement (blank lines to be filled in by the lender or loan servicer, as appropriate):

'This is an official notice that the mortgage on your home is in default, and the lender intends to foreclose in _____ days. The name, address, and phone number of housing counseling agencies approved by the Secretary of Housing and Urban Development serving your county are listed at the end of this notice.

'In addition, your lender or loan servicer shall notify such an approved housing counseling agency of your default so that such agency can contact you regarding any assistance it may be able to provide. You have the right to request that your lender or loan servicer not share your information with a housing counseling agency.

'You can also choose an approved housing counseling agency from the list provided with this notice to assist you. By calling one of these approved housing counseling agencies and signing an authorization form, your agency of choice will notify your lender or loan servicer of your decision.'.

''(II) COUNSELING AGENCY LISTING.—A listing of at least 5 State and local housing counseling agencies approved by the Secretary. It is the responsibility of the lender or loan servicer to ensure that—

''(aa) if fewer than 5 approved housing counseling agencies serve the area where the eligible homeowner is located, all available housing counseling agencies in that area shall be listed; and

''(bb) the list shall include options of housing counseling agencies that provide in-person counseling, as well as telephone counseling.

''(ii) NOTICE.—Any notice required to be sent pursuant to this subparagraph shall be sent by first class mail to the last known address of the eligible homeowner and if different, to the residence which is the subject of the mortgage. The notice shall also be sent by registered or certified mail

''(iii) TIMING.—Any notice required to be sent pursuant to this subparagraph shall be sent at such time as the eligible homeowner is at least 60 days contractually delinquent in his or her mortgage payments or is in violation of other provisions of the mortgage.

''(iv) INCLUSION IN ALL FORECLOSURE MAILINGS.—The foreclosure notice and counseling agency listing required under subclauses (I) and (II) of clause (i) shall be included with all foreclosure mailings sent to an eligible homeowner.

''(C) NO FORECLOSURE IF APPLICATION FOR FORECLOSURE PREVENTION SERVICES.—A lender or loan servicer shall not initiate or continue a foreclosure—

''(i) upon receipt of a written confirmation that an eligible homeowner has engaged a housing counseling agency approved by the Secretary for the purposes of receiving foreclosure prevention services and assistance; and

''(ii) for the 45-day period beginning on the date of receipt of such written confirmation.

''(D) DUTIES.—

''(i) DUTY OF LENDER OR SERVICER TO FORWARD INFORMATION.—

''(I) IN GENERAL.—Each lender or loan servicer shall forward the contact information of each eligible homeowner who has borrowed amounts from such lender or loan servicer for a qualified mortgage to a housing counseling agency approved by the Secretary in the event the mortgage payment of that homeowner is or becomes more than 60 days late so that the housing counseling agency can attempt to reach the homeowner.

''(II) PRE-EXISTING RELATIONSHIP.—In the case that an eligible homeowner has a preexisting relationship with a housing counseling agency approved by the Secretary, or a preference for one agency over another, the homeowner may indicate as such—

''(aa) at the time of settlement of the real estate transaction involving a qualified mortgage issued to that homeowner;

''(bb) by providing written correspondence to the lender or loan servicer for such qualified mortgage stating which housing counseling agency the homeowner would like to work with in case the homeowner should become delinquent in his or her mortgage payments; or

''(cc) by signing an authorization form at the office of such housing counseling agency of choice, which form shall then be sent to the lender or loan servicer.

''(III) RULES OF CONSTRUCTION.—In order to carry out the provisions of this paragraph, lenders and loan servicers may form relationships with housing counseling agencies approved by the Secretary to provide services to eligible homeowners. Notwithstanding the previous sentence, exclusive relationships between any such parties are strictly prohibited.

''(ii) AGENCY REPRESENTATION OF HOMEOWNER.—When a housing counseling agency provides a lender or loan servicer with a signed authorization form to represent an eligible homeowner, the lender or servicer shall respond to requests from that agency for information within 3 days, and to any workout proposals of that agency within 7 days. A lender or loan servicer may not refuse to work with a housing counselor from a housing counseling agency approved by the Secretary, if a signed authorization form an eligible homeowner has been received by that lender or loan servicer (faxed, scanned, and other electronically reproduced authorizations of such authorization form shall also be acceptable).

''(iii) REQUIRED DISCLOSURES TO HOMEOWNER.—Each eligible homeowner shall be informed at the time of settlement of the real estate transaction involving a qualified mortgage issued to that homeowner that under this paragraph a housing counseling agency may provide easier access to assistance in case the homeowner becomes delinquent on his or her mortgage payments and that no information that would make it possible to identify the homeowner will be given to any other entity for any reason without the prior approval of the homeowner.

''(iv) REQUIRED RESOLUTIONS.—A lender or loan servicer shall be required to consider all loss mitigation resolutions for each case of foreclosure initiated by the lender or loan servicer, including the modification of a qualified mortgage to a more permanent, affordable interest rate.

''(v) REQUIRED DISCLOSURES TO HOUSING COUNSELING AGENCIES.—A lender or loan servicer shall disclose to any housing counseling agency approved by the Secretary and authorized to represent an eligible homeowner the name of the originator of the loans as stated in the Pooling and Servicing

Agreement, and the name of the pool Trustee.

''(E) REIMBURSEMENTS FOR HOUSING COUNSELING SERVICES.—

''(i) IN GENERAL.—A lender or loan servicer of a qualified mortgage made to an eligible homeowner shall reimburse the housing counseling agency that is authorized to represent the homeowner upon the rendering of services by such agency to the homeowner under this paragraph.

''(ii) REIMBURSEMENT.—A lender or loan servicer shall seek reimbursement for the payment of housing counseling services as described under clause (i) from the Trust, if any, designated in the lender or servicer's Pooling and Servicing Agreement.

''(F) AVAILABILITY OF WAIVER.—

''(i) IN GENERAL.—An eligible homeowner may choose not to receive information regarding State and local housing counseling agencies approved by the Secretary, or to have their information shared with State and local housing counseling agencies, or both, at any time after default. An eligible homeowner may also submit a signed letter to their lender or loan servicer at any time after default to waive their right to receive information regarding State and local housing counseling agencies.

''(ii) LIMITATION ON WAIVER.—The waiver described under clause (i) shall only apply to the receipt of information regarding housing counseling agencies located in the area where the homeowner is located or the sharing of the homeowner's personal information with such agencies. The waiver described under clause (i) shall not apply to the right of the homeowner to seek foreclosure prevention counseling, nor does it relieve the lender or loan servicer of the requirement to notify the homeowner of the availability of counseling as described in this section.

''(G) DEFINITIONS.—In this paragraph, the following definitions shall apply:

''(i) LENDER.—The term 'lender' has the same meaning as in section 3500.2 of title 24, Code of Federal Regulations.

''(ii) LOAN SERVICER.—The term 'loan servicer' has the same meaning as the term 'servicer' as that term is defined in section 6(i)(2) of the Real Estate Settlement Procedures Act (12 U.S.C. 2605(i)(2)).''.

TITLE VII—REMEDIES AND ENFORCEMENT

SEC. 701. MATERIAL DISCLOSURES AND VIOLATIONS.

(a) MATERIAL DISCLOSURES.—Section 103(u) of the Truth in Lending Act (15 U.S.C. 1602(u)) is amended by—

(1) striking ''material disclosures'' and inserting ''material disclosures or violations''; and

(2) striking ''and the disclosures required by section 129(a)'' and inserting ''and the provisions of sections 129, 129A, and 129B.''.

(b) CONSEQUENCES OF FAILURE TO COMPLY.—Section 129(j) of the Truth in Lending Act (15 U.S.C. 1639(j)) is amended by striking ''contains a provision prohibited by'' and inserting ''violates a provision of''.

SEC. 702. RIGHT OF RESCISSION.

(a) TIME LIMIT FOR EXERCISE OF RIGHT.—Section 125(f) of the Truth in Lending Act (15 U.S.C. 1635(f)) is amended by striking ''An obligor's right of rescission shall expire three years after the date of consummation'' and inserting ''An obligor's right of rescission shall extend to 6 years from the date of consummation''.

(b) ASSERTION OF RIGHT.—Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) is amended by inserting after the second sentence the following new sentence: ''This subsection shall not bar a person from asserting a right to rescission under section 125 in an action to collect the debt or as a defense to a judicial foreclosure or to stop a nonjudicial foreclosure after the expiration of the time period set forth in section 125(f), but not exceed 10 years from the date of the consummation of the transaction.''.

SEC. 703. CIVIL LIABILITY.

(a) IN GENERAL.—Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by—

(1) striking ''creditor'' and inserting ''creditor or mortgage broker'' in each place that term appears;

(2) striking ''CREDITOR'' and inserting ''CREDITOR OR MORTGAGE BROKER'' in each place that term appears; and

(3) striking ''creditor's'' and inserting ''creditor's or mortgage broker's'' in each place that term appears.

(b) STATUTE OF LIMITATIONS EXTENDED FOR SECTION 129, 129A, OR 129B VIOLATIONS.—Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)), as amended by section 702(b), is further amended—

(1) in the first sentence, by striking ''Any action'' and inserting ''Except as otherwise provided in this subsection, any action'';

(2) by inserting after the first sentence the following new sentence: ''Any action under this section with respect to any violation of section 129, 129A, or 129B may be brought in any United States district court, or in any other court of competent jurisdiction, within 3 years from the date of the occurrence of the violation.''; and

(3) in the fifth sentence (as so redesignated) by striking ''violation of section 129'' and inserting ''violation of section 129, 129A, or 129B''.

(c) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—An action to enforce a violation of section 129, 129A, or 129B of the Truth in Lending Act, as amended and added by this Act, may also be brought by the appropriate State attorney general in any appropriate United States district court, or any other court of competent jurisdiction, not later than 3 years after the date on which the violation occurs. An action under this subsection does not create an independent basis for removal of an action to a United States district court.

(d) OTHER CHANGES TO CIVIL LIABILITY.—

(1) AMOUNT OF AWARD.—Section 130(a)(2) of the Truth in Lending Act (15 U.S.C. 1640(a)(2)) is amended—

(A) in subparagraph (A)(iii), by—

(i) striking ''$200'' and inserting ''$500'';

(ii) striking ''$2,000'' and inserting ''$5,000''; and

(iii) adding before the semicolon at the end the following: '', such amount to adjusted annually based on the consumer price index, to maintain current value.''; and

(B) in subparagraph (B), by striking ''500,000'' and inserting ''$5,000,000''.

(2) FAILURE TO COMPLY WITH SECTION 129A.—Section 130(a)(4) of the Truth in Lending Act (15 U.S.C. 1640(a)(4)) is amended by inserting ''or 129A'' after ''129''.

SEC. 704. LIABILITY FOR MONETARY DAMAGES.

Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is amended by—

(1) by redesignating subsection (f) as subsection (g); and

(2) by inserting after subsection (e) the following new subsection:

''(f) LIABILITY OF ASSIGNEES FOR MONETARY DAMAGES FOR VIOLATIONS OF SECTIONS 129A AND 129B.—

''(1) SUBPRIME OR NONTRADITIONAL LOANS.—

''(A) INDIVIDUAL ACTIONS.—Notwithstanding subsections (a) and (e), any person who purchases, holds, or is otherwise assigned a mortgage or similar security interest in connection with a subprime or nontraditional home mortgage loan, other than a loan described under section 103(aa), shall be liable in an individual action for remedies available under section 130 for violations of sections 129A and 129B that the consumer could assert against the creditor or mortgage originator originating that mortgage.

''(B) CLASS ACTIONS.—Notwithstanding subsections (a) and (e), any person who purchases, holds, or is otherwise assigned a mortgage or similar security interest in connection with a subprime or nontraditional home mortgage loan, other than a loan described under section 103(aa), shall be liable in a class action for remedies available under section 130 for violations of section 129A that the consumer could assert against the creditor or mortgage originator originating that mortgage, unless such person demonstrates, by a preponderance of the evidence, that a reasonable person exercising ordinary and independent due diligence could not determine that the home mortgage loan was not in compliance with the requirements of section 129A.

''(2) OTHER LOANS.—Notwithstanding subsections (a) and (e), any person who purchases, holds, or is otherwise assigned a mortgage or similar security interest in connection with home mortgage loan other than a loan described under section 103(aa), a subprime, or a nontraditional loan, shall be liable only in an individual action for remedies available under section 130 for violations of section 129B that the consumer could assert against the creditor or mortgage originator originating that mortgage, provided that such liability is limited to the amount of all remaining indebtedness and the total amount paid in connection with the transaction plus amounts required to recover costs, including reasonable attorneys' fees.''.

SEC. 705. REMEDY IN LIEU OF RESCISSION FOR CERTAIN VIOLATIONS.

Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is further amended by adding at the end the following new subsection:

''(h) REMEDY IN LIEU OF RESCISSION FOR CERTAIN VIOLATIONS.—At the election of a consumer entitled to rescind for violations of sections 129, 129A, or 129B, any person (including a creditor) who holds, purchases, or is otherwise assigned a mortgage or similar security interest in connection with home mortgage loan—

''(1) may be required to make such adjustments to the balance of the obligation as are required under section 125; and

''(2) shall modify or refinance the loan, at no cost to the consumer, the resulting balance of which shall provide terms that would have satisfied the requirements of sections 129, 129A, or 129B at the origination of the loan and to pay costs and reasonable attorneys fees.''.

SEC. 706. PROHIBITION ON MANDATORY ARBITRATION.

Section 131 of the Truth in Lending Act (15 U.S.C. 1641) is further amended by adding at the end the following new subsection:

''(i) RULE OF CONSTRUCTION.—No provision in a home mortgage loan shall be construed to bar a consumer from access to any judicial procedure, forum, or remedy through any court of competent jurisdiction under any provision of Federal or State law.''.

SEC. 707. LENDER LIABILITY.

Section 130 of the Truth in Lending Act (15 U.S.C. 1640) is amended by adding at the end the following new subsection:

''(i) LENDER LIABILITY.—

''(1) TRANSITIVE LIABILITY FOR SUBPRIME LOAN.—In any case in which a mortgage broker sells or delivers a high-cost mortgage, a subprime mortgage, or a nontraditional mortgage, a creditor shall be liable for the acts, omissions, and representations made by the mortgage broker in connection with such home mortgage loan.

''(2) TRANSITIVE LIABILITY FOR OTHER LOANS.—In the case of any other home mortgage loan not described under paragraph (1) in which a mortgage broker has received a yield spread premium or other compensation from a creditor, the creditor shall be liable for the acts, omissions, and representations made by the mortgage broker in connection with such home mortgage loan.''.

TITLE VIII—OTHER BANKING AGENCY AUTHORITY

SEC. 801. INCLUSION OF ALL BANKING AGENCIES IN THE REGULATORY AUTHORITY UNDER THE FEDERAL TRADE COMMISSION ACT WITH RESPECT TO DEPOSITORY INSTITUTIONS.

(a) IN GENERAL.—Section 18(f) of the Federal Trade Commission Act (15 U.S.C. 57a(f)(1)) is amended—

(1) in paragraph (1)—

(A) in the first sentence—

(i) by striking ''banks or savings and loan institutions described in paragraph (3), each agency specified in paragraph (2) or (3) of this subsection shall establish'' and inserting ''depository institutions and Federal credit unions, the Federal banking agencies and the National Credit Union Administration Board shall each establish''; and

(ii) by striking ''banks or savings and loan institutions described in paragraph (3), subject to its jurisdiction'' and inserting ''depository institutions or Federal credit unions subject to the jurisdiction of such agency or Board'';

(B) in the second sentence, by striking ''The Board of Governors of the Federal Reserve System (with respect to banks) and the Federal Home Loan Bank Board (with respect to savings and loan institutions described in paragraph (3))'' and inserting ''Each Federal banking agency (with respect to the depository institutions each such agency supervises)'';

(C) in the third sentence—

(i) by striking ''each such Board'' and inserting ''each such banking agency and the National Credit Union Administration Board'';

(ii) by striking ''banks or savings and loan institutions described in paragraph (3)'' each place such term appears and inserting ''depository institutions subject to the jurisdiction of such agency'';

(iii) by striking ''(A) any such Board'' and inserting ''(A) any such Federal banking agency or the National Credit Union Administration Board''; and

(iv) by striking ''with respect to banks, savings and loan institutions'' and inserting ''with respect to depository institutions''; and

(D) by adding at the end the following: ''For purposes of this subsection, the terms 'Federal banking agency' and 'depository institution' have the same meaning as in section 3 of the Federal Deposit Insurance Act.'';

(2) in paragraph (3), by inserting ''by the Director of the Office of Thrift Supervision'' before the period at the end;

(3) in paragraph (4), by inserting ''by the National Credit Union Administration'' before the period at the end; and

(4) by amending paragraph (5) to read as follows:

''(5) For the purpose of the exercise by the Federal banking agencies described in paragraphs (2) and (3) and the National Credit Union Administration Board described in paragraph (4) of its powers under any Act referred to in those paragraphs, a violation of any regulation prescribed under this subsection shall be considered a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in paragraphs (2) through (4), each of the agencies or the Board referred to in those paragraphs may exercise, for the purpose of enforcing compliance with any regulation prescribed under this subsection, any other authority conferred on it by law.''.

(b) PREEMPTION.—Such section 18(f) is further amended by striking paragraph (6) and inserting the following:

''(6) Notwithstanding anything in this subsection or any other provision of law, including the National Bank Act (12 U.S.C. 38 et seq.) and the Home Owners' Loan Act (12 U.S.C. 1461 et seq.), regulations promulgated under this subsection shall be considered supplemental to State laws governing unfair and deceptive acts and practices and may not be construed to preempt any provision of State law that provides equal or greater protections.''.

(c) TECHNICAL AMENDMENT.—Such section 18(f) is further amended in paragraph (2)(C), by inserting ''than'' after ''(other''.

TITLE IX—MISCELLANEOUS

SEC. 901. AUTHORIZATIONS.

For fiscal years 2008, 2009, 2010, 2011, and 2012, there are authorized to be appropriated to the Attorney General of the United States, a total of—

(1) $31,250,000 to support the employment of 30 additional agents of the Federal Bureau of Investigation and 2 additional dedicated prosecutors at the Department of Justice to coordinate prosecution of mortgage fraud efforts with the offices of the United States Attorneys; and

(2) $750,000 to support the operations of interagency task forces of the Federal Bureau of Investigation in the areas with the 15 highest concentrations of mortgage fraud.

''HOMEOWNERSHIP PRESERVATION AND PROTECTION ACT OF 2007''—KEY PROVISIONS

TITLE I: HIGH COST MORTGAGES

Definition of ''High Cost'' Mortgage. The legislation tightens the definition of a ''high cost mortgage'' for which certain consumer protections are triggered. The new definition, which amends the ''Home Ownership Equity Protection Act,'' (HOEPA) is as follows: first mortgages with APRs that exceed Treasury securities by eight (8) percentage points (with a range from 6 to 10 percent); second mortgages with APRs that exceed Treasury securities by ten (10) percentage points (with a range of 8 to 12 percent); or mortgages where total points and fees payable by the borrower are five percent (5 percent) of the total loan amount, or, for smaller loans of less than $20,000, the lesser of eight (8) percentage or $1,000. The bill revises the definition of points and fees to include yield spread premiums and other charges. It allows for up to two bona fide discount points outside of the 5 percent trigger.

The following key protections are triggered for high cost mortgages

No financing of points and fees. The bill prohibits a creditor from directly or indirectly financing any portion of the points, fees or prepayment penalties. These limitations and prohibitions are designed to discourage lenders from ''flipping'' the mortgage in order to extract additional excessive fees.

Prohibition on prepayment penalties. The bill prohibits the lender from imposing prepayment penalties for high cost loans.

Prohibition of Yield Spread Premiums (YSPs). The bill prohibits YSPs for placing a borrower in a high cost loan that is more costly than that for which the borrower qualifies. Mortgage brokers, who have originated about 70 percent of subprime mortgages, receive higher compensation through YSPs for steering borrowers to these higher cost loans. This bill will eliminate the incentive to ''upsell'' these borrowers.

Net Tangible Benefit. The originator must determine that a high-cost refinance loan provides a net tangible benefit to the borrower.

Prohibition on balloon payments. The bill prohibits the use of balloon payments.

Limitation on single premium credit insurance. The bill would prohibit the upfront payment or financing of credit life, credit disability or credit unemployment insurance on a single premium basis. However, borrowers are free to purchase such insurance with the regular mortgage payment on a periodic basis, provided that it is a separate transaction that can be canceled at any time.

TITLE II—SUBPRIME AND NON-TRADITIONAL MORTGAGES

Definition of ''Subprime Mortgage'' and ''Nontraditional Mortgage'': The legislation creates a new designation in the law for subprime and nontraditional mortgages.

Subprime mortgages. Mortgages that have interest rates that are 3 percentage points higher than Treasury securities of comparable maturities for first mortgages and 5 percentage points for second mortgages. This definition tracks the Federal Reserve Board's definition of subprime lending for the purposes of the Home Mortgage Disclosure Act (HMDA) reporting. In addition, the legislation includes an alternative measure that is designed to prevent capturing too many mortgages when the yield curve is unusually flat.

Nontraditional mortgages. These are mortgages that allow deferral of the payment of interest or principal. Interest-only and payment-option ARMs are the current examples of nontraditional mortgages we see most often.

Requirements for making subprime or nontraditional mortgages

Ability to repay. A mortgage originator must establish that a borrower has the ability to repay the loan based on the fully-indexed rate, assuming full amortization. In making this determination, the originator must consider the borrower's income, credit history, debt-to-income (DTI) ratio, employment status, residual income, and other financial resources.

Require Escrows for Taxes and Insurance. While nearly all prime mortgages include escrows for taxes and insurance, very few subprime loans include such escrows. The legislation would require these escrows for all subprime and nontraditional loans.

Nearly all prime loans include escrows for taxes and insurance. Yet, few subprime mortgages include these escrows. Currently, unscrupulous mortgage originators entice unsophisticated borrowers into taking out abusive loans with promises of lower monthly payments, in part by comparing their current payments, which often include escrows, with proposed loans that do not include escrows in the monthly payments and, therefore, appear lower. Then, when insurance or tax payments are due, the borrowers, who often do not have the resources to pay the taxes, are forced to seek new loans to cover the required payments, generating a whole new set of fees. Lack of escrows, in other words, becomes a tool for ''flipping'' borrowers into yet another, high-cost loan.

Debt-to-Income Ratio. If a borrower's DTI ratio is greater than 45 percent, a mortgage is assumed to be unaffordable unless the originator can show, at a minimum, sufficient residual income to afford the loan.

The ability to repay standard is largely based on guidance published by the federal regulators in late 2006 and early 2007 and applied to the sub prime and nontraditional mortgage markets.

The following protections apply to borrowers who take out subprime or nontraditional mortgages

No Prepayment Penalties. The legislation will prohibit all prepayment penalties for subprime and nontraditional loans.

Prepayment penalties unfairly trap subprime borrowers in expensive subprime mortgages. These penalties make it cost-prohibitive to refinance into better loans, or strip out equity when the penalty is paid. Studies done by the Center for Responsible Lending (CRL) show that interest rates on subprime loans are no lower for loans with prepayment penalties—the ostensible rationale for these fees—than for loans without these penalties, even after holding credit scores, LTVs, and other factors constant. Moreover, the CRL study shows that the odds of having a loan with a prepayment penalty increases significantly for borrowers who live in minority neighborhoods.

No Yield-Spread Premiums (YSPs). The legislation will prohibit YSPs for subprime and nontraditional loans.

YSPs are payments made by lenders to mortgage brokers, usually without the borrower's knowledge. In exchange for the YSP, the lender charges the borrower a higher interest rate than that for which he could have qualified. The industry justifies YSPs as a way for the borrower to pay the broker's fee and other closing costs without paying cash at the closing table. However, numerous studies have shown that YSPs result in higher costs for consumers. For example, a study done by HUD (while Senator Martinez was Secretary) concluded that half ($7.5 billion) of the $15 billion paid in YSPs at the time of this study ''is not passed through . . . to reduce closing costs.''. More recent research by HUD indicates that fees tend to rise even as interest rates do—exactly the opposite of what the industry says should happen—and that this effect is more pronounced for minority borrowers. Research sponsored by Freddie Mac also came to the conclusion that borrowers who pay YSPs along with direct fees pay more for loans, all other things being equal.

Net Tangible Benefit. The originator must determine that a high-cost refinance loan provides a net tangible benefit to the borrower.

Remedies

Individual borrowers who get loans in violation of these provisions will be able to rescind (i.e. ''unwind'') the loans. Alternatively, at the choice of the borrower, the creditor or holder of the loan may cure the loan by making the borrower whole.

Actual damages.

Statutory damages up to $5,000 per loan, regardless of the number of violations per loan (up from $2,000 per loan in current law), plus the sum of finance charges and fees.

Makes mortgage brokers liable for violations of TILA

No class actions for assignees who perform due diligence to ensure they are not buying loans in violation of the law.

As in current law, creditors are subject to class actions for making loans in violation of the law with damages capped at the lesser of 1 percent of net worth or $5 million (current law caps class damages at the lesser of 1 percent of net worth or $500,000).

A key goal of the legislation is to realign the interests of the mortgage production system with the interest of the borrower. In recent years, as many observers have noted, the incentives in the system have worked against the interests of borrowers and resulted in larger loans, at higher rates, with weaker underwriting, and without regard to the ability of the borrower to repay the loans. As The Economist put it:

Mortgages were written for a fee, sold to investment banks for a fee, then packaged and floated for another fee. At each link in the chain, the fees mattered more than the quality of the loans . . .

To insure that the quality of the loans does matter, a reasonable amount of responsibility for making good loans must travel with the mortgage. The legislation allows for individual actions by borrowers who have been given illegal loans to make themselves whole. There will be no class liability for assignees who exercise due diligence to avoid funding and buying these loans.

Moreover, it is crucial that the burden of curing an illegal loan rest not with the victims, such as Dorothy King, the elderly woman who testified before the Senate Committee on Banking, Housing, and Urban Affairs in February, 2007. The subprime borrower is often more vulnerable, less sophisticated, lower income, and less likely to have access to better lenders. For the subprime borrower, or most any borrower, their home is their chief asset. If the borrower faces the loss of her only real asset through a foreclosure, for instance, as a result of a violation of the law, it is simply not fair to put the burden on her to find a party that can make her whole, spending months in the courts while she faces the loss of her home. The sensible and fair thing to do is to allow her to go to the only party that can give her relief—the note holder. The note holder, which is typically a large institutional entity such as a pension fund, insurance company, hedge fund or the like, is in a far better position to recover from another party who may have caused the problem. In the long run, this process will bring more discipline to the mortgage marketplace, the very kind of discipline that has been missing over the past several years.

TITLE III—ALL MORTGAGES

All home loan borrowers get the following rights and protections:

All mortgage originators—lenders and brokers—owe a duty of good faith and fair dealing to borrowers. The duty of good faith and fair dealing is widespread in state law with regard to the execution of contracts. It would apply that duty to the making of a mortgage contract, which is a new, but reasonable application.

All mortgage originators have to make reasonable efforts to make an advantageous loan to the borrower, considering that borrower's circumstances. For example, this requirement would prohibit a broker or lender from giving an adjustable rate mortgage with a high likelihood of escalating costs to an elderly person on a fixed income.

Mortgage brokers owe a fiduciary duty to their customers. The bill designates mortgage brokers as fiduciaries of borrowers. This means that brokers represent the borrower in the transaction.

Today, brokers typically sell their services by telling borrowers that they will do the shopping for the borrowers. Indeed, the National Association of Mortgage Brokers (NAMB) made the claim on their web site (until they were questioned about it at a Senate Banking Committee hearing) that brokers serve as ''mentors'' to borrowers to help them through the complex process of getting a loan. An industry publication, *Inside B & C Lending*, described mortgage brokers as being particularly adept at convincing borrowers that they were ''trusted advisors'' to the borrowers. The bill would simply make the brokers live up to the role they often claim for themselves—that of a fiduciary.

Prohibit steering. Mortgage originators are prohibited from steering borrowers to more costly loans than that for which the borrower qualifies. This provision is designed to counteract the widespread problem of prime quality borrowers being steered into subprime loans. This provision would require originators to notify borrowers that they qualify for higher quality loans, even if the originator does not offer those prime loans.

Over the past several years, there have been estimates that from 20 to 50 percent of subprime borrowers could have qualified for prime loans. The Wall Street Journal (''Subprime Debacle Traps Even Very Credit-Worthy,'' December 3, 2007) reported on a study it commissioned that found in 2006 that 61 percent of subprime loans went to ''people with credit scores high enough to often qualify for conventional loans with far better terms.'' HMDA data repeatedly shows that minorities are given higher cost loans in disproportionate numbers.

Limitations on Yield-Spread Premiums. Allows YSPs only in the case of no-cost loans. (YSPs for high-cost, subprime, and nontraditional mortgages would be prohibited). Where YSPs are paid, brokers may not receive any other compensation from any other source and prepayment penalties are prohibited.

As discussed above, mortgage brokers argue that YSPs are a way for cash-constrained borrowers to cover closing costs, including the broker fee. However, independent research has consistently shown that mortgage brokers keep at least half or more of the YSPs for themselves. For example, HUD research showed that no more than half of all YSPs went to offset closing costs. Other research commissioned by Freddie Mac, showed that borrowers who paid a combination of direct fees and YSPs paid significantly more in fees than borrowers who got no-cost loans where a broker's compensation came completely from the YSP. Research also indicates that there is a significant racial component to YSPs. Racial minorities pay even more in fees than similarly situated white borrowers.

Limit Low- and No-Documentation Loans. The legislation requires adequate documentation for mortgage loans. However, it gives the Federal Reserve the authority to make exceptions as deemed appropriate, presumably for prime loans.

Remedies

Individual borrowers who get loans in violation of these provisions will be able to rescind (i.e. ''unwind'') the loans. Alternatively, at the choice of the borrower, the creditor or holder of the loan may cure the loan by making the borrower whole.

Actual damages.

Statutory damages up to $5,000 per loan, regardless of the number of violations per loan (up from $2,000 per loan in current law).

Makes mortgage brokers liable under TILA for violations of TILA.

No class liability for assignees.

TITLE IV—GOOD FAITH AND FAIR DEALING IN APPRAISALS

Requirements for Appraisers

Appraisers owe a duty of good faith and fair dealing to borrowers.

No lender may encourage or influence an appraiser to ''hit'' a certain value in connection with making a home loan. In addition, a lender may not seek to influence an appraiser's work, nor select an appraiser on the basis of an expectation that he or she will appraise a property at a high enough value to facilitate a home loan.

A crucial cause of the current mortgage meltdown has been inflated appraisals. Many ethical appraisers complain that lenders will only use appraisers who consistently value properties at the levels necessary to allow the loan to close. Appraisers who do not cooperate simply do not get hired. This is particularly detrimental to the homeowner because it leads the homeowner to believe he

or she has equity where little or none may exist.

Appraisers must obtain bonds equal to one percent of the value of the homes appraised.

Remedies available to borrowers

Lenders must adjust outstanding mortgages where appraisals exceeded true market value by 10 percent or more.

When an appraisal exceeds market value by 10 percent (plus or minus 2 percent) or more, a borrower has a cause of action against the lender. A consumer who is awarded remedies under this section shall collect from the appraiser's bond.

Actual and statutory damages up to $5,000.

TITLE V—GOOD FAITH AND FAIR DEALING IN HOME LOAN SERVICING

Requirements for mortgage servicers

Mortgage Servicers owe a duty of good faith and fair dealing to borrowers. James Montgomery, former Chairman of Great Western Financial Corporation, and a former director of Freddie Mac, said recently, ''Servicers make money on foreclosure,'' (American Banker, December 4, 2007). This standard would prevent servicers from unfairly profiting from their servicing responsibilities.

Prompt crediting of payments. Servicers must credit all payments on the day received. Payments must first be credited to principal and interest due on the note.

Servicers can employ a scheme called ''pyramiding,'' by which they hold a payment until it is late, use a portion of the payment to cover the late fee, thereby causing the remaining payment to be insufficient. When the next month's payment is made, it is insufficient to cover the previous shortfall and the new payment, generating another penalty fee. The legislation will require both prompt posting of payments and crediting of payments to principal and interest before being charged to late fees or other charges.

All fees must be reasonable and for services actually provided, and only if allowed by the mortgage contract. In addition, an adequate notice and statement is required.

No force-placing of insurance without clear notice to the borrower.

Currently, some servicers claim that the borrower does not have insurance on the property and ''force-places'' such insurance on the loan. Sometimes, that insurance is purchased from an affiliate; oftentimes the servicer is given a significant commission for doing so. Many times, as was the case with the Fairbanks Capital case settled by the FTC in 2003, the borrowers already had insurance, but were charged for the additional insurance in any case. As with the pyramiding problems, these extra charges could often result in the borrower being put into default.

Prior to initiating foreclosure. a servicer must attempt to implement loss mitigation.

Even in the dire circumstances existing in the mortgage market today, and despite the nearly universal calls for action from regulators, government officials, and consumer advocates, mortgage servicers have been extremely slow to offer meaningful alternatives to foreclosure for most borrowers. In fact, according to Moody's, only 1 percent of subprime ARM borrowers have received any loan modifications during the current crisis. Furthermore, a new study shows how servicers use the foreclosure process to make additional fees from the troubled borrowers, even borrowers in bankruptcy. These conclusions are consistent with practices uncovered by the FTC in its 2003 investigation of mortgage servicing practices of Fairbanks Capital, one of the largest subprime mortgage servicers at the time. This provision will insure that adequate loss mitigation is offered to the borrower prior to foreclosure.

Require servicers to report their loss mitigation activities.

In order to see which servicers are meeting their requirements under this provision, the legislation will require public reporting of loss mitigation activities. The lack of responsiveness in the current crisis indicates how important public accountability is to maximize the number of homes saved.

Remedies

Actual and statutory damages (up to $5,000).

TITLE VI—FORECLOSURE PREVENTION COUNSELING

Require that borrowers be notified of availability of foreclosure prevention counseling both at closing and upon default.

Require servicers, with the consent of the borrower, to forward the borrower's name to a HUD-authorized foreclosure counselor upon default.

It is widely agreed that reluctance by delinquent borrowers to respond to communications from the lender or servicer reduces the effectiveness of loss mitigation. The legislation will help expedite contact with the borrower by having it come from a 3rd party counselor.

The servicer must reimburse the counselor for its work.

Once a borrower is working with an approved housing counselor, the servicer may not initiate foreclosure for 45 days to give the parties an opportunity to work out a mutually agreeable solution.

TITLE VI—REMEDIES

Description of remedies are listed in each relevant title.

TITLE VIII—GIVE THE FDIC AND OCC UDAP RULEMAKING AUTHORITY.

Currently, only the Federal Reserve may issue a regulation establishing standards for determining unfair or deceptive acts or practices (UDAP) for banks. The Office of Thrift Supervision has the authority to do this for thrifts, and has indicated its intention of issuing such a rule. This provision would give other banking regulators the same authority. These regulators have requested this authority, and have indicated that they are willing to act.

OTHER PROVISIONS

The Federal Reserve Board will be responsible for writing regulations to implement this Act.

The Act takes effect 6 months after date of enactment.

The legislation provides protections for renters in foreclosed homes.

The legislation authorizes additional appropriations to the FBI to fight mortgage fraud.

By Mr. COLEMAN (for himself and Mr. LEAHY):

S. 2455. A bill to provide $1,000,000,000 in emergency Community Development Block Grant funding for necessary expenses related to the impact of foreclosures on communities; to the Committee on Banking, Housing, and Urban Affairs.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2455

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Community Foreclosure Assistance Act of 2007''.

SEC. 2. ADDITIONAL EMERGENCY CDBG FUNDING.

(a) APPROPRIATION.—There are authorized to be appropriated, and shall be appropriated, $1,000,000,000, to remain available until expended, for assistance to States, metropolitan cities, and urban counties (as those terms are defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302)) in carrying out the community development block grant program under title I of the Housing and Community Development Act of 1974 (42 U.S.C. 5301 et seq.)—

(1) for necessary expenses related to the impact of housing foreclosures, and other related economic and community development activities; and

(2) to provide foreclosure-based rental assistance for individual renters in the form of relocation assistance.

(b) LIMITATION.—

(1) IN GENERAL.—Except for counseling services none of the amounts appropriated under subsection (a) may be provided, directly or indirectly, to an individual homeowner for foreclosure prevention purposes, including for refinancing assistance, loans, or any other form of financial assistance. Such funds may be provided directly to a certified housing counseling service, which shall be considered as a subrecipient of such grant amounts.

(2) DEFINITION.—For purposes of paragraph (1), the term ''certified housing counseling service'' means a housing counseling agency approved by the Secretary of Housing and Urban Development pursuant to section 106(d) of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701x(d)).

SEC. 3. INCREASED PUBLIC SERVICES REQUIREMENT CAP.

For purposes of this Act, paragraph (8) of section 105(a) of the Housing and Community Development Act of 1974 (42 U.S.C. 5305(a)) shall apply to the use of all funds appropriated or otherwise made available under this Act by substituting—

(1) ''25 per centum'' for ''15 per centum'' each place that term appears; and

(2) ''25 percent'' for ''15 percent'' each place that term appears.

SEC. 4. LOW AND MODERATE INCOME REQUIREMENT.

At least 50 percent of the funds appropriated or otherwise made available under this Act shall benefit primarily persons of low- and moderate-income.

SEC. 5. PLANS AND REPORTS.

(a) COMPREHENSIVE PLAN.—None of the funds appropriated or otherwise made available under this Act shall be used by any State, metropolitan city, or urban county until such time as that State, metropolitan city, or urban county submits to the Secretary of Housing and Urban Development, for approval by the Secretary, a comprehensive plan detailing the proposed use of all such funds.

(b) REPORT ON USE OF FUNDS.—During the period of time that funds are being expended under this Act, each State, metropolitan city, or urban county receiving funds under this Act shall submit, on a quarterly basis, a report to the Secretary of Housing and Urban Development describing and accounting for the use of all such funds expended during the applicable period.

SEC. 6. WAIVERS.

(a) GENERAL WAIVER.—In administering funds appropriated or otherwise made available under this Act, the Secretary of Housing and Urban Development shall waive, or specify alternative requirements for, any provision of any statute or regulation that

the Secretary administers in connection with the obligation by the Secretary or the use by the recipient of such funds (except for requirements related to fair housing, nondiscrimination, labor standards, and the environment), upon a request by a State, metropolitan city, or urban county that such waiver is required to facilitate the use of such funds, and a finding by the Secretary that such waiver would not be inconsistent with the overall purpose of the statute.

(b) LOW AND MODERATE INCOME REQUIREMENT WAIVER.—The Secretary of Housing and Urban Development may waive, upon the request of a State, metropolitan city, or urban county, the 50 percent requirement described under section 4. Such waiver shall, in the discretion of the Secretary, only be granted if a compelling need is demonstrated.

(c) PUBLIC SERVICES CAP.—The Secretary of Housing and Urban Development may waive, upon the request of a State, metropolitan city, or urban county, the public service requirement cap described under section 3. Such waiver shall, in the discretion of the Secretary, only be granted if a compelling need is demonstrated.

(d) OTHER WAIVER PROVISIONS.—

(1) PUBLICATION IN THE FEDERAL REGISTER.—The Secretary of Housing and Urban Development shall publish in the Federal Register any waiver of any statute or regulation authorized under this section not later than 5 days before the effective date of such waiver.

(2) REVIEW OF WAIVER.—Each waiver granted under this section by the Secretary of Housing and Urban Development shall be reconsidered, and if still necessary reauthorized by the Secretary, not later than 2-years after the date on which such waiver was first published in the Federal Register pursuant to paragraph (1).

(3) NOTIFICATION OF COMMITTEES.—The Secretary of Housing and Urban Development shall notify the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives of any waiver granted or denied under this section not later than 5 days before such waiver is granted or denied.

SEC. 7. NONCOMPLIANCE WITH COMMUNITY DEVELOPMENT REQUIREMENTS.

For purposes of this Act, the provisions of section 111 of the Housing and Community Development Act of 1974 (42 U.S.C. 5311)(relating to noncompliance) shall apply to the use of all funds appropriated or otherwise made available under this Act.

SEC. 8. GAO AUDIT.

The Comptroller General of the United States shall—

(1) conduct an audit of the expenditure of all funds appropriated under this Act in accordance with generally accepted government auditing standards; and

(2) submit a report detailing such audit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives.

SEC. 9. REPORTS.

The Secretary of Housing and Urban Development shall report, on a quarterly basis, to the Committee on Appropriations of the Senate and the Committee on Appropriations of the House of Representatives on—

(1) the use of funds appropriated or otherwise made available under this Act, including—

(A) the number of households receiving counseling and rental assistance;

(B) the outcomes of such assistance activities;

(C) the names of those certified housing counseling service providing counseling assistance pursuant to this Act; and

(D) such other information as the Secretary may deem appropriate; and

(2) all steps taken by the Secretary to prevent fraud and abuse of such funds.

By Mr. REID (for Mrs. CLINTON (for herself and Mr. ROBERTS)):

S. 2456. A bill to amend the Public Health Service Act to improve and secure an adequate supply of influenza vaccine; to the Committee on Health, Education, Labor, and Pensions.

Mrs. CLINTON. Mr. President, today I join my colleague, Senator PAT ROBERTS, in introducing the Influenza Vaccine Security Act. Senator ROBERTS and I first introduced this legislation during the 109th Congress, in response to seasonal flu vaccine shortages, as well as the growing awareness of the need for pandemic flu preparedness. Some of these provisions were incorporated into law, but the overall need to address problems in education, tracking, and distribution related to seasonal influenza vaccine have not changed.

About 36,000 Americans die from the flu every year, and 200,000 more are hospitalized due to complications from the flu. These complications and deaths are largely preventable with a simple flu shot. Yet the process of getting a flu shot is not always simple. Since 2000, our Nation has experienced multiple shortages of flu vaccine prior to Thanksgiving, when demand is highest. What we have also experienced—and what received less attention—is the fact that at the end of the flu season, we often have surpluses. The millions of doses that were in such high demand earlier in the season go unused. We need to bring some stability into the vaccine market, to ensure that we have vaccine at periods of high demand, and also sustain demand beyond the limited early-season period.

The Influenza Vaccine Security Act will help create a stable flu vaccine market for manufacturers by increasing coordination between the public and private sectors so that we can set targets and procedures for dealing with both shortages and surpluses before they hit. It will also create a buyback provision so that we can direct late-season surplus vaccine to public health and bioterrorism prevention efforts, instead of having it go to waste. The legislation will increase demand for vaccine by improving education and outreach to populations with historically low rates of influenza vaccination.

Of course, vaccines do us no good if they can't get to the people who need them, and in past shortages, we had problems matching existing stocks of vaccine to the high priority populations, like senior citizens, who needed vaccines right away. The Influenza Vaccine Security Act also sets up a tracking system so the CDC and state and local health departments can share the information they need to ensure that high priority populations will have access to vaccines. This tracking system is critical and will provide fundamental infrastructure necessary not only to deal with our annual flu season, but avian or other pandemic outbreaks.

This legislation is supported by Trust for America's Health, the American Lung Association, the American Public Health Association, the National Association of County and City Health Officials, the American Academy of Pediatrics, the American Academy of Physician Assistants, the American College of Occupational and Environmental Medicine, the Association of American Medical Colleges, the Association for Professionals in Infection Control and Epidemiology, the Allergy & Asthma Network, Mothers of Asthmatics, the Asthma and Allergy Foundation of America, the Center for Biosecurity at the University of Pittsburgh Medical Center, the Center for Infectious Disease Research & Policy, the Immunization Coalition of Washington, DC, and the Service Employees International Union.

Mr. President, I ask unanimous consent to have letters of support printed in the RECORD.

There being no objection, the material was ordered to be placed in the RECORD, as follows:

DECEMBER 11, 2007.

Hon. HILLARY CLINTON,
U.S. Senate,
Washington, DC.
Hon. PAT ROBERTS,
U.S. Senate,
Washington, DC.

DEAR SENATORS CLINTON AND ROBERTS: The undersigned organizations join in thanking you for your leadership in protecting our nation's health. By introducing the Influenza Vaccine Security Act of 2007, you address one of the most critical issues confronting the public's health in the United States—the challenge of ensuring an adequate and timely influenza vaccine supply. According to the Centers for Disease Control and Prevention (CDC), the seasonal flu claims as many as 36,000 lives each year and results in more than 200,000 hospitalizations. These numbers could skyrocket in the case of an influenza pandemic.

The introduction of the Influenza Vaccine Security Act is an important step toward improving the U.S. response to outbreaks of seasonal flu. Among its provisions, the legislation provides incentives to manufacturers to enter the U.S. flu vaccine market and expand production capacity, increases funding for vaccine research and development, and increases flu surveillance and outreach, coordination, and education. Also, public health officials must have the flexibility to provide the medication where outbreaks are most severe. Your bill provides the Secretary of Health and Human Services with the ability to prioritize vaccine distribution to high-risk populations and to ensure geographic equity.

In addition to preparation for seasonal flu, the legislation takes important steps to prevent and respond to a severe flu pandemic. We applaud the emphasis on outreach, as the efficient, widespread distribution of seasonal flu vaccines would allow healthcare providers to conduct exercises to prepare for the event of a severe flu pandemic. In addition, the provision allowing unused vaccines to be redeployed to state and local health departments for mass vaccination exercises will also be useful in preparation for an influenza pandemic. Finally, allowing the Secretary to purchase antiviral medications and N–95 respirator masks and encouraging stockpiling

of pediatric countermeasures will be critical to treating and minimizing the effects of a pandemic influenza outbreak.

Prevention is the key to protecting and saving American lives from seasonal flu outbreaks. Again, we want to commend your leadership and thank you for introducing this very important public health bill.

Sincerely,

American Academy of Pediatrics; American Academy of Physician Assistants; American College of Occupational and Environmental Medicine; Association of American Medical Colleges; Association for Professionals in Infection Control and Epidemiology; Allergy & Asthma Network Mothers of Asthmatics; Asthma and Allergy Foundation of America; Center for Biosecurity, University of Pittsburgh Medical Center; Center for Infectious Disease Research & Policy; Immunization Coalition of Washington, DC; Service Employees International Union; Trust for America's Health.

AMERICAN PUBLIC HEALTH ASSOCIATION,
Washington, DC, December 3, 2007.

Hon. HILLARY CLINTON,
U.S. Senate,
Washington, DC.

Hon. PAT ROBERTS,
U.S. Senate,
Washington, DC.

DEAR SENATORS CLINTON AND ROBERTS: On behalf of the American Public Health Association (APHA), the oldest and most diverse organization of public health professionals in the world, dedicated to protecting all Americans, their families and communities from preventable, serious health threats and assuring community-based health promotion and disease prevention activities and prevention health services are universally accessible in the United States, I write to thank you for your attention to and leadership on the important public health issue of influenza. The Influenza Vaccine Security Act is an important step to ensuring that the country has an adequate supply of vaccine for seasonal flu and addresses important issues related to pandemic influenza.

We are pleased your legislation contains provisions to increase the production of seasonal influenza vaccine that will improve public health, as well as a provision expanding the current influenza surveillance system. Improved surveillance is not only important for seasonal influenza, but is vital to an early, rapid response to an influenza pandemic. APHA applauds the inclusion of a provision directing the Secretary of Health and Human Services to increase the supply of antiviral medications and N–95 respirator masks to ensure sufficient supply for responders and children. In addition, we support the creation of a tracking system for vaccine distribution, with a focus on ensuring that vaccine is distributed to high priority populations. Finally, your legislation would increase outreach and education and improve its coordination, especially the focus on increasing vaccination rates among providers and medically underserved communities. We believe this is a critical step in eliminating disparities in this area.

Thank you again for your leadership on this important public health issue. We look forward to working with you as the Influenza Vaccine Security Act moves through the legislative process. If you have any questions or need additional information, please contact me or have your staff contact Don Hoppert or Michealle Carpenter.

Sincerely,

GEORGES C. BENJAMIN,
Executive Director.

AMERICAN LUNG ASSOCIATION,
New York, NY, December 4, 2007.

Hon. HILLARY RODHAM CLINTON,
U.S. Senate,
Washington, DC.

DEAR SENATOR CLINTON: The American Lung Association strongly supports your Influenza Vaccine Security Act of 2007. Thank you for recognizing the importance of prevention in saving lives from annual flu outbreaks. Once enacted into law, this legislation will confront a pressing public health issue in the United States—establishing a continuous and adequate supply of influenza vaccine. It will also allow the United States to take initiative in improving its response to outbreaks, such as accelerating participation in the global influenza pandemic prevention effort.

According to the Centers for Disease Control and Prevention (CDC), the seasonal flu takes the lives of 36,000 people every year. Such alarming numbers can have an effect on the public health of the United States, as well as impact health care costs. The American Lung Association is confronting this issue through our national Faces of Influenza public awareness campaign, which urges Americans to get their annual influenza vaccination. The Lung Association also provides a free, online Flu Clinic Locator, making it easier for the American public to find flu shot clinics in their local area.

The Influenza Vaccine Security Act of 2007 addresses many issues associated with influenza prevention and treatment. This legislation offers vaccine manufacturers important incentives to enter the U.S. flu vaccine market, expand their production capacity, increase surveillance and outreach efforts and coordination, and boost funding for ongoing research and development of vaccines. This legislation also provides the U.S. Secretary of Health and Human Services the authority to prioritize the distribution of vaccines, particularly among at-risk groups.

Your legislation also recognizes the importance of ensuring that unused vaccines be redeployed to state and local health departments. These provisions will be critical in responding to domestic outbreaks and preparing for an influenza pandemic.

The American Lung Association commends your efforts regarding this high-priority concern and looks forward to working with you to see the Influenza Vaccine Security Act of 2007 enacted into law.

Sincerely,

BERNADETTE A. TOOMEY,
President and CEO.

NATIONAL ASSOCIATION OF COUNTY & CITY HEALTH OFFICIALS,
Washington, DC, December 11, 2007.

Hon. HILLARY RODHAM CLINTON,
Senate Office Building,
Washington, DC.

Hon. PAT ROBERTS,
Senate Office Building,
Washington, DC.

DEAR SENATORS CLINTON AND ROBERTS: I am writing today on behalf of the National Association of County and City Health Officials (NACCHO) to endorse the Influenza Vaccine Security Act of 2007.

This bill would begin to address uncertainty in influenza vaccine supply. NACCHO believes that federal vaccine policy must explicitly recognize, support, and strengthen the unique roles of governmental public health agencies in monitoring vaccine availability at the local level, assuring that immunizations are received by the most vulnerable and high-risk populations, and intervening to correct maldistribution, particularly during shortages and supply disruptions. Tracking influenza vaccine supplies would assist local health departments to learn which end-users may have excess vaccine that they are willing to donate or sell so that it can be reallocated voluntarily to nursing homes, health departments, visiting nurses, or any other entity that serves a high-risk population. During the 2004–2005 flu season, NACCHO and local health departments learned many lessons about what information is needed when vaccine shortages occur. We appreciate the inclusion of a tracking system in your bill that has potential to collect data at the local level and provide estimates of supply on a county by county basis. The funding authorized in your bill will provide a good start on a national system of tracking influenza vaccine supply, which will help prevent illness and death when supply shortages or disruptions occur.

We also appreciate the inclusion in your bill of demonstration grants to enhance the infrastructure of public health departments and health care providers in order to improve their ability to report and track influenza vaccine supply. The ability of local health departments to serve their communities will also be strengthened by the influenza vaccine education and outreach grants included in the Influenza Vaccine Security Act of 2007.

The shortages and maldistribution of influenza vaccine is a critical issue that our nation will undoubtedly face again in the future. This legislation would provide important tools to help ensure that individuals that need influenza vaccine are protected in the future. Thank you for your past support of local public health. The nation's local health departments look forward to continuing to work with you to safeguard the public's health.

Sincerely,

PATRICK M. LIBBEY,
Executive Director.

By Mr. BINGAMAN (for himself, Mrs. DOLE, Mr. DURBIN, Mrs. FEINSTEIN, Ms. STABENOW, Mr. SALAZAR, Mr. KERRY, Mr. BROWN, Mrs. MCCASKILL, Mr. SCHUMER, Mrs. BOXER, Mr. LEVIN, Mr. BAYH, Mr. BURR, Mr. MARTINEZ, Mrs. CLINTON, Mr. PRYOR, Mr. LEAHY, Mrs. LINCOLN, Mrs. HUTCHISON, Mr. CHAMBLISS, Mr. ROCKEFELLER, Mr. ISAKSON, and Mr. BOND):

S. 2460. A bill to extend by one year the moratorium on implementation of a rule relating to the Federal-State financial partnership under Medicaid and the State Children's Health Insurance Program and on finalization of a rule regarding graduate medical education under Medicaid and to include a moratorium on the finalization of the outpatient Medicaid rule making similar changes; to the Committee on Finance.

Mr. BINGAMAN. Mr. President, I rise today with my colleagues Senators DOLE, DURBIN, FEINSTEIN, STABENOW, SALAZAR, KERRY, BROWN, MCCASKILL, SCHUMER, BOXER, LEVIN, BAYH, BURR, MARTINEZ, CLINTON, PRYOR, LEAHY, LINCOLN, HUTCHISON, CHAMBLISS, ROCKEFELLER, and ISAKSON to introduce legislation vitally important to the ability of our States to continue to fund their Medicaid programs and ensure access to health care services for low-income constituents. The legislation would extend the existing 1 year moratorium for an additional year on a

CMS rule limiting Medicaid payments to public and teaching hospitals as well as the ability of States to fund critical healthcare programs for rural residents such as through Sole Community Hospital programs.

On January 18, 2007, the Centers for Medicare and Medicaid Services, CMS, published a proposed rule entitled ''Medicaid Program; Cost Limit for Providers Operated by Units of Government and Provisions to Ensure the Integrity of Federal- State-Financial Partnership'' that would make sweeping changes to public and other safety net provider payment and financing arrangements with State Medicaid programs. The proposed rule would: impose a cost limit on Medicaid payments to public and other safety net providers; impose a new Federal definition of public provider status; and, greatly restrict the sources of non-Federal share funding through intergovernmental transfers, IGTs, and certified public expenditures, CPEs.

National advocates report that over 400 comment letters were submitted to CMS on the proposed rule, none of which expressed support for the rule and the overall majority of which called for its withdrawal. In addition, a budget neutral reserve fund to block this regulation was introduced by me and approved by the Senate this year.

CMS subsequently issued an additional regulation that would force billions of dollars in additional Medicaid payment reductions to teaching hospitals, many of whom are public hospitals, hampering the ability of those providers to provide essential services including the education of the next generation of medical professionals despite a shortage of medical professionals. The proposed regulations would cut at least $5 billion in Medicaid funding for safety net hospitals nationwide over 5 years—weakening their effectiveness for all of us and jeopardizing the health of millions of vulnerable children and families.

In response to these rules, 66 Senators and 283 Members of the House have gone on record in opposition to the rules since they were released earlier this year. This includes a majority of the Finance Committee including Senators: ROBERTS, SNOWE, SMITH, ROCKEFELLER, KERRY, BINGAMAN, SALAZAR, STABENOW, WYDEN, LINCOLN, SCHUMER, and CANTWELL.

Furthermore, Congress showed its strong opposition to the rules by including a one-year moratorium in the recent supplemental appropriations bill, P.L. 110–28. The moratorium prohibits implementation of the rules for one year from the date of enactment of the supplemental. The supplemental was negotiated extensively by Congress and the White House and a deal was reached on May 23. On May 25—the day the President signed the supplemental, and the moratorium, into law—the administration put the final rule on display and published it in the Federal Register on May 29. The most damaging components of the proposed rule remain in the final rule, including Medicaid cuts limiting public and other safety net providers to cost.

Since then, CMS has issued a third rule of major concern to public and teaching hospitals. On September 28, 2007, CMS released a new proposed rule governing the calculation of the Medicaid outpatient upper payment limit, UPL. Many believe this action was in violation of the current moratorium enacted by Congress. For example, the outpatient regulation would exclude GME costs from the calculation of the Medicaid Outpatient UPL for all hospitals and would also eliminate many ancillary services from the UPL calculation for all-inclusive rate providers.

Major Medicaid reforms require a congressional role. By rushing to publish a final regulation, CMS has disregarded congressional opposition and attempted to usurp Congress's role. In addition, the status quo is now the administration's new policy, not what existed when Congress was in the process of enacting the moratorium. CMS's action requires states to prepare for implementation of the regulation and expend administrative resources to do so—all of this before Congress has the opportunity to address the key policy issues contained in the regulation.

I urge my colleagues to join me in supporting this important legislation.

Mr. President, I ask unanimous consent that the text of the bill and letters of support be printed in the RECORD.

There being no objection, the material was ordered to printed in the RECORD, as follows:

S. 2460

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXTENSION OF MORATORIUM ON IMPLEMENTATION OF RULE RELATING TO THE FEDERAL-STATE FINANCIAL PARTNERSHIP UNDER MEDICAID AND SCHIP AND ON FINALIZATION OF A RULE RELATING TO THE TREATMENT OF GRADUATE MEDICAL EDUCATION UNDER MEDICAID; MORATORIUM ON THE FINALIZATION OF THE OUTPATIENT MEDICAID RULE MAKING SIMILAR CHANGE.

(a) FINDINGS.—Congress makes the following findings:

(1) A proposed rule was published on January 18, 2007, on pages 2236 through 2248 of volume 72, Federal Register, and a rule purporting to finalize that rule was published on May 29, 2007, on pages 29748 through 29836 of volume 72, Federal Register (relating to parts 433, 447, and 457 of title 42, Code of Federal Regulations). This rule would significantly change the Federal-State financial partnership under the Medicaid and the State Children's Health Insurance Programs by—

(A) imposing a cost limit on payments made under such programs to governmentally operated providers;

(B) limiting the permissible sources of the non-Federal shares required under such programs and the types of entities permitted to contribute to such shares; and

(C) imposing new requirements on participating providers and States under such programs.

(2) A proposed rule was published on May 23, 2007, on pages 28930 through 28936 of volume 72, Federal Register (relating to parts 438 and 447 of title 42, Code of Federal Regulations) that would significantly change the scope of permissible payments under Medicaid by removing the ability for States to make payments related to graduate medical education.

(3) Permitting these rules to take effect would drastically alter the Federal-State financial partnership in Medicaid and the State Children's Health Insurance Programs, undermine the discretion traditionally accorded States, and have a negative impact on States, providers, and beneficiaries in the following manner:

(A) Implementation of the rule regarding the Federal-State financial partnership would force billions of dollars of payment reductions, thus hampering the ability of impacted providers to provide essential services including allowing those providers to be ready and available for emergency situations and to provide care to the increasing numbers of uninsured.

(B) Implementation of the rule regarding graduate medical education would force billions of dollars in payment reductions to teaching hospitals, thus hampering the ability of those providers to provide essential services including the education of the next generation of medical professionals despite a shortage of medical professionals.

(4) By including a one-year moratorium in the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, Congress intended to forestall administrative action to allow itself time to assess the proposals and consider alternatives that would not negatively impact States, providers, and beneficiaries.

(5) After Congressional approval of the moratorium contained in the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007, the Centers for Medicare & Medicaid Services on May 25, 2007, submitted for publication its final rule, which was not significantly different from the January proposed regulation.

(6) The publication of a final rule in May regarding the Federal-State financial partnership was not anticipated by Congress and accelerates the negative impact on States, providers, and beneficiaries, thus undermining the intent of the moratorium passed by Congress.

(7) The publication of a proposed rule in May regarding graduate medical education was not anticipated by Congress and undermines the intent of the moratorium passed by Congress.

(8) A proposed rule was published on September 28, 2007, on pages 55158 through 55166 of volume 72, Federal Register (relating to parts 440 and 447 of title 42, Code of Federal Regulations) that would significantly change the scope of permissible payments under Medicaid by redefining outpatient hospital services and dictating methodologies for calculation of the outpatient services upper payment limit.

(9) Congress did not anticipate continued changes after the moratorium to reduce state flexibility to make adequate Medicaid payments.

(10) Expansion and extension of the moratorium is necessary to effectuate Congressional intent.

(b) EXTENSION OF PROHIBITION.—Section 7002(a)(1) of the U.S. Troop Readiness, Veterans' Care, Katrina Recovery, and Iraq Accountability Appropriations Act of 2007 (Public Law 110–28) is amended—

(1) by striking ''1 year'' and inserting ''2 years'',

(2) by inserting ''or (D)'' after ''described in subparagraph (A)'' in subparagraph (B);

(3) by striking ''or'' at the end of subparagraph (B);

(4) by striking the period at the end of subparagraph (C) and inserting ''; or''; and

(5) by inserting at the end the following:

''(D) finalize or otherwise implement provisions contained in the proposed rule published on September 28, 2007, on pages 55158 through 55166 of volume 72, Federal Register (relating to parts 440 and 447 of title 42, Code of Federal Regulations).''.

U.S. SENATE,
Washington, DC, March 16, 2007.

Hon. MICHAEL O. LEAVITT,
Secretary, U.S. Department of Health and Human Services, Washington, DC.

DEAR SECRETARY LEAVITT: We are writing to express our strong opposition to the Medicaid changes contained in the Proposed Rule CMS–2258–P, which was issued on January 18, 2007, As you know, bipartisan objections to the changes called for in this proposed rule have been raised by Congress and our nation's Governors since 2005. We urge you to withdraw this rule immediately.

The Medicaid program is the foundation of our health care safety net. As our nation's largest insurer, it provides access to meaningful and affordable health care for more than 50 million people. It also keeps hospitals, doctors, nursing homes, and clinics operating in our communities. Without this critical source of funding, many providers would not be able to afford to offer high-quality health care, especially in rural areas.

Since its enactment in 1965, Medicaid has been a federal-state partnership. The federal government has worked together with the states to ensure health care coverage and access for the most vulnerable Americans—children, pregnant women, the elderly and the disabled. This shared responsibility has been paramount, with states implementing the program within broad federal guidelines.

The new proposed rule would usurp state flexibility and fundamentally alter the nature of state funding for the Medicaid program. We are particularly concerned with three aspects of the proposed rule: (1) the new definition of a ''unit of government;'' (2) the restrictions placed on states' ability to fund their share of Medicaid expenditures; and (3) the ''cost'' limit imposed on Medicaid provider payments. We are also alarmed by CMS' refusal to provide any state-specific data on the impact of this proposed rule, which we believe could be much greater than a $5 billion reduction in federal Medicaid spending.

The new definition of a ''unit of government'' contained in the proposed rule is at odds with the definition adopted by Congress in Title XIX (Section 1903(w)(7)(G)), as described in House Report 102–310. The proposed rule adopts a federal definition in which only those governmental entities with taxing authority would be deemed governmental enough to contribute to the non-federal share of Medicaid expenditures. This is not what Congress intended. The statutory definition of a ''unit of government'' respects the fundamental right of states to establish subdivisions to suit their needs and best carry out governmental functions. In the case of Medicaid, federal law grants states the authority and flexibility to provide health care through the most efficient and effective methods possible. In most states, this means that state university hospitals, public nursing homes, school-based health centers, and other providers become an essential part of the governmental health care infrastructure. We believe the narrow definition of ''unit of government'' proposed by this new rule would lead to substantial cuts for public providers and limit access to the vital health care services that millions of Americans depend upon.

Similarly, CMS is also singling out public providers by restricting the type of public funds that can be used to finance the state share of Medicaid expenditures. Under the proposed rule, only funding derived from state and local taxes would be allowed to fund the state share. By your agency's own admission, inappropriate federal matching arrangements have been largely eliminated over the last three years through CMS' oversight activities. Given these activities, it is unclear why the new restriction on public funds is necessary or how it will further the overall efforts of CMS to reduce Medicaid fraud and abuse.

Furthermore, this aspect of the proposed rule also seems to contradict federal law. Section 1902(a)(2) of the Social Security Act allows states to rely on ''local sources'' for up to 60 percent of the non-federal share of program expenditures. Current law does not limit the types of local sources that may be used to only those sources derived from tax revenue. Such a policy shift would hamper states abilities to fund their Medicaid programs, and we question CMS' authority to pursue such a far-reaching policy change.

Finally, we are concerned about the cost limit imposed on public providers by this proposed rule. Under current regulations, states are permitted to provide Medicaid reimbursement to hospitals and other providers up to the amount that would be payable using Medicare payment policies. The proposed rule would reduce that limit to Medicaid costs for governmental providers only, with no concurrent change for private providers. Public providers, who disproportionately serve the uninsured, should not be subject to a more restrictive cost limit than private providers. Such a reimbursement policy would have an adverse impact on system-wide health care needs, such as trauma care, school-based health care and medical education.

We understand and respect the efforts of CMS to ensure that the Medicaid program is operating on a fiscally sound and responsible basis; however, we believe the proposed rule has gone far beyond what is necessary to secure fiscal integrity. Instead, the proposed rule would undermine both the federal-state partnership and the shared goal of ensuring health care coverage and access, which are the hallmarks of the Medicaid program.

While we are willing to work with you and CMS to strengthen Medicaid, fundamental changes in Medicaid's financing and payment mechanisms as envisioned in this rule can only be adopted by Congress. For this reason, we request that you withdraw the regulation.

We thank you for your prompt consideration of and attention to this request. We also ask that our comments be placed in the public record of the rulemaking.

Sincerely,

Senators John D. Rockefeller, IV, Gordon H. Smith, Jeff Bingaman, Richard Durbin, John Kerry, Barack Obama, Hillary Rodham Clinton, Barbara Boxer, Edward M. Kennedy, Susan Collins, Johnny Isakson, Elizabeth Dole, Kay Bailey Hutchison, Thad Cochran, Pete Domenici, Richard Shelby.

Senators Ken Salazar, Dianne Feinstein, Bill Nelson, Jim Webb, Debbie Stabenow, Robert Menendez, Evan Bayh, Olympia Snowe, Saxby Chambliss, Richard Burr, Wayne Allard, Christopher Bond, Pat Roberts, John Warner.

Senators Ron Wyden, Carl Levin, Joseph Lieberman, Sherrod Brown, Charles Schumer, Harry Reid, Joseph Biden, Bernard Sanders, Blanche Lincoln, Mark Pryor, Frank Lautenberg, Russell Feingold, Maria Cantwell, Tom Harkin.

Senators Daniel Akaka, Barbara Mikulski, Christopher Dodd, Patrick Leahy, Patty Murray, Arlen Specter, Daniel Inouye, Amy Klobuchar, Benjamin Cardin, Claire McCaskill, Jon Tester, Herb Kohl, Robert Casey, Jr., Mary Landrieu, Norm Coleman, Sheldon Whitehouse.

By Mr. AKAKA (for himself, Mr. DODD, and Mr. OBAMA):

S. 2462. A bill to provide that before the Secretary of Defense may furlough any employee of the Department of Defense on the basis of a lack of funds, the Secretary shall suspend any non-essential service contract entered into by the Department of Defense, and for other purposes; to the Committee on Armed Services.

Mr. AKAKA. Mr. President, for the last few weeks, the administration has increased its rhetoric about a looming budget shortfall at the Department of Defense unless Congress passes an emergency spending bill. Most recently, the President threatened to lay off hundreds of thousands of Federal workers at DoD to make up for any shortfalls. This is simply unacceptable.

The Pentagon said as late as last week that the Department has sufficient funds in order to keep our fighting men and women in Iraq and Afghanistan supplied through late February to mid-March of next year. Nonetheless, the administration continues to threaten to layoff workers to make up for a non-existent gap in funding. The Department of Defense should not use Federal employees as pawns because the White House is playing politics with the budget.

As Chairman of the Governmental Affairs Oversight of Government Management and Federal Workforce Subcommittee and the Armed Services Readiness Subcommittee, I have made oversight Government contracting a priority. In several hearings, I have heard officials and whistleblowers testify about the systemic waste, fraud and abuse, in many contracts. If the administration wants to save money, it should start increasing oversight over contracts and drop those that are not performing.

Rather than increasing their efforts to eliminate waste, fraud, and abuse in contracting that costs us billions every year, this administration would rather lay off patriotic civilian Federal employees who have dedicated their careers to the Federal Government. The Federal Government is already facing looming crisis in retirements and is working hard to recruit new workers to fill vacancies. Using Federal workers to make a political statement is wrong. It sends a negative message to prospective employees and hurts recruitment efforts in the long run.

Instead of looking to cut the Federal workforce to save money, the President should be holding contractors accountable to reduce costs and ensure

that our fighting men and women in Iraq and Afghanistan have the supplies they need.

Today, I am introducing a bill that would send a clear message to the administration that Federal workers are not bargaining chips.

The idea behind this legislation is simple, rather than laying off Federal workers to close a budget shortfall, the Pentagon should suspend contracts for non-essential services. Many service contractors work side-by-side with Federal workers. There is no reason that Federal workers should get a pink slip for Christmas while the Pentagon continues to spend millions on contractors.

Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

There being no objection, the text of the bill was ordered to be printed in the RECORD, as follows:

S. 2462

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. LIMITATION ON FURLOUGHS OF EMPLOYEES OF THE DEPARTMENT OF DEFENSE.

(a) DEFINITIONS.—In this Act:

(1) EMPLOYEE.—The term ''employee''—

(A) has the meaning given under section 7511(a)(1) of title 5, United States Code; and

(B) includes a member of the Senior Executive Service.

(2) FURLOUGH.—The term ''furlough''—

(A) has the meaning given under section 7511(a)(5) of title 5, United States Code; and

(B) with respect to a member of the Senior Executive Service, has the meaning given under section 3595a(a) of title 5, United States Code.

(b) LIMITATION ON FURLOUGHS.—Before the Secretary of Defense may furlough employees of the Department of Defense on the basis of a lack of funds, the Secretary shall suspend all nonessential service contracts entered into by the Department of Defense as are necessary to make up for the lack of funds.

(c) TRANSFER OF FUNDS.—The Secretary of Defense shall transfer an amount equal to payments not required to be made by the United States by reason of the suspension of contracts under subsection (b) from the applicable appropriations accounts used for making such payments into the applicable appropriations accounts for the salaries and expenses of employees.

(d) USE OF TRANSFERRED FUNDS.—Amounts transferred into appropriations accounts under subsection (c) may be used for authorized purposes of those accounts to prevent the furlough of employees on the basis of a lack of funds.

(e) EFFECTIVE DATE.—This Act shall apply with respect to fiscal year 2008.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 402—RECOGNIZING THE LIFE AND CONTRIBUTIONS OF HENRY JOHN HYDE

Mr. GRASSLEY (for himself, Mr. BROWNBACK, Mr. COBURN, Mr. CORNYN, Mr. DEMINT, Mr. HATCH, Mr. ROBERTS, Mr. SUNUNU, Mrs. DOLE, Mr. ALLARD, Mr. BUNNING, Ms. SNOWE, Mr. DOMENICI, Mr. MARTINEZ, Mr. ENSIGN, Mr. COLEMAN, Mr. VITTER, Mr. HAGEL, Mr. SHELBY, Mr. THUNE, Mr. BENNETT, Mr. CRAPO, Mr. CRAIG, Mr. KYL, Mr. SESSIONS, and Mrs. SMITH) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 402

Whereas Representative Henry John Hyde of Illinois was born in Chicago, Cook County, Illinois, on April 18, 1924;

Whereas Henry Hyde excelled as a student both at Georgetown University, at which he helped take the Hoyas basketball team to the National Collegiate Athletic Association semifinals in 1943 and from which he graduated with a bachelor of science degree in 1947, and at Loyola University Chicago School of Law, from which he graduated in 1949;

Whereas Henry Hyde served his country for his entire adult life, as an officer of the United States Navy from 1944 to 1946, where he served in combat in the Philippines during World War II, in the United States Navy Reserve from 1946 to 1968, from which he retired at the rank of Commander, as a member of the Illinois House of Representatives from 1967 to 1974 and Majority Leader of that body from 1971 to 1972, as a delegate to the Illinois Republican State Conventions from 1958 to 1974, and as a Republican Member of the United States House of Representatives for 16 Congresses, over 3 decades from January 3, 1975, to January 3, 2007;

Whereas Henry Hyde served as the Ranking Member on the Select Committee on Intelligence of the House of Representatives from 1985 to 1991, in the 99th through 101st Congresses, and as chairman of the Committee on the Judiciary of the House of Representatives from the 104th through 106th Congresses and the Committee on International Relations from the 107th through 109th Congresses;

Whereas, in his capacity as a United States Representative, Henry Hyde tirelessly served as a champion for children, both born and unborn, and relentlessly defended the rule of law;

Whereas Henry Hyde demonstrated his commitment to the rule of law during his tenure in the House of Representatives, once stating, ''The rule of law is no pious aspiration from a civics textbook. The rule of law is what stands between us and the arbitrary exercise of power by the state. The rule of law is the safeguard of our liberties. The rule of law is what allows us to live our freedom in ways that honor the freedom of others while strengthening the common good. . . If across the river in Arlington Cemetery there are American heroes who died in defense of the rule of law, can we give less than the full measure of our devotion to that great cause?'';

Whereas Henry Hyde was a key player in some of the highest level debates concerning the response to the terrorist attacks on our Nation on September 11, 2001;

Whereas Henry Hyde received the Presidential Medal of Freedom, the Nation's highest civilian honor, on November 5, 2007, at a ceremony at which President George W. Bush explained about Representative Hyde, ''He used his persuasive powers for noble causes. He stood for a strong and purposeful America—confident in freedom's advance, and firm in freedom's defense. He stood for limited, accountable government, and the equality of every person before the law. He was a gallant champion of the weak and forgotten, and a fearless defender of life in all its seasons.'';

Whereas Henry Hyde's greatest legacy is as the author, during his freshman term in the House of Representatives, of an amendment to the 1976 Departments of Labor and Health, Education, and Welfare Appropriations Act—commonly referred to as the Hyde Amendment—that prohibits Federal dollars from being used to pay for the abortion of unborn babies, which conservative figures estimate has saved at least 1,000,000 lives;

Whereas Henry Hyde lived by the belief that we will all be judged by our Creator in the end for our actions here on Earth, which he once explained on the floor of the House of Representatives by saying, ''Our moment in history is marked by a mortal conflict between a culture of life and a culture of death. God put us in the world to do noble things, to love and to cherish our fellow human beings, not to destroy them. Today we must choose sides.'';

Whereas Henry Hyde selflessly battled for the causes that formed the core of his beliefs until the end of his life, and was greatly respected by his friends and adversaries alike for his dedication and will remain a role model for advocates of those causes by virtue of his conviction, passion, wisdom, and character; and

Whereas Henry Hyde was preceded in death by his first wife, Jeanne, and his son Hank, and is survived by his second wife, Judy, his sons Robert and Anthony and daughter Laura, 3 stepchildren, Susan, Mitch, and Stephen, 7 grandchildren, and 7 step-grandchildren: Now, therefore, be it

Resolved, That the Senate—

(1) notes with deep sorrow the death of Henry John Hyde on November 29, 2007, in Chicago;

(2) extends its heartfelt sympathy to the family of Henry Hyde;

(3) recognizes the life of service and the outstanding contributions of Henry Hyde; and

(4) directs the Secretary of the Senate to transmit a copy of this resolution to the family of Henry Hyde.

Mr. GRASSLEY. Mr. President, today, I am introducing a Senate resolution to honor the life and work of Congressman Henry John Hyde of Illinois. I authored this resolution because I knew Henry Hyde for over 20 years. In fact, he and I were 2 of 16 Republicans who were first elected to the House of Representatives in 1974.

Congressman Hyde was a true leader in the House of Representatives. He proved his leadership by authoring the ''Hyde Amendment'' to help protect the lives of unborn children. Because of this long-standing policy, innocent lives have been saved and taxpayers have not been forced to fund abortions.

Henry Hyde was intelligent, as was proved during his tenure as chairman of two different committees—the House Committee on the Judiciary and the House Committee on International Relations. In his 32 years in the House of Representatives, he was dedicated to the rule of law as well as the expansion of freedom around the world.

He was a great Representative for the people of his district, and he leaves an important legacy for our Nation. It is with great respect that I introduce this resolution in his honor.