



In bill text the following has special meaning  
underline denotes added text  
~~struck out text denotes deleted text~~

**2007 US S 2636**

**AUTHOR:** Reid

**VERSION:** Introduced

**VERSION DATE:** 02/13/2008

S 2636 PCS

Calendar No. 577

110th CONGRESS

2d Session

S. 2636

To provide needed housing reform.

IN THE SENATE OF THE UNITED STATES

February 13, 2008

Mr. REID introduced the following bill; which was read the first time  
February 14, 2008

Read the second time and placed on the calendar

A BILL

To provide needed housing reform.

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 `Foreclosure Prevention Act of 2008'.

(b) Table of Contents- The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.

TITLE I--MODIFICATIONS ON USE OF QUALIFIED MORTGAGE BONDS

Sec. 101. Modifications on use of qualified mortgage bonds; temporary increased volume cap for certain housing bonds.

TITLE II--EMERGENCY ASSISTANCE FOR THE REDEVELOPMENT OF ABANDONED AND FORECLOSED HOMES

Sec. 201. Emergency assistance for the redevelopment of abandoned and foreclosed homes.

TITLE III--HOUSING COUNSELING RESOURCES

Sec. 301. Housing counseling resources.

## TITLE IV--HELPING FAMILIES SAVE THEIR HOME IN BANKRUPTCY ACT

2

Sec. 401. Short title.

### Subtitle A--Minimizing Foreclosures

Sec. 411. Special rules for modification of loans secured by residences.

Sec. 412. Waiver of counseling requirement when homes are in foreclosure.

### Subtitle B--Providing Other Debtor Protections

Sec. 421. Combating excessive fees.

Sec. 422. Maintaining debtors' legal claims.

Sec. 423. Resolving disputes.

Sec. 424. Enacting a homestead floor for debtors over 55 years of age.

Sec. 425. Disallowing claims from violations of consumer protection laws.

## TITLE V--MORTGAGE DISCLOSURE IMPROVEMENT ACT

Sec. 501. Short title.

Sec. 502. Enhanced mortgage loan disclosures.

## TITLE VI--INCENTIVES FOR BUSINESS

Sec. 601. Carryback of certain net operating losses allowed for 5 years; temporary suspension of 90 percent AMT limit.

### TITLE I--MODIFICATIONS ON USE OF QUALIFIED MORTGAGE BONDS

SEC. 101. MODIFICATIONS ON USE OF QUALIFIED MORTGAGE BONDS; TEMPORARY INCREASED VOLUME CAP FOR CERTAIN HOUSING BONDS.

(a) Use of Qualified Mortgage Bonds Proceeds for Subprime Refinancing Loans- Section 143(k) of the Internal Revenue Code of 1986 (relating to other definitions and special rules) is amended by adding at the end the following new paragraph:

#### `(12) SPECIAL RULES FOR SUBPRIME REFINANCINGS-

`(A) IN GENERAL- Notwithstanding the requirements of subsection (i)(1), the proceeds of a qualified mortgage issue may be used to refinance a mortgage on a residence which was originally financed by the mortgagor through a qualified subprime loan.

`(B) SPECIAL RULES- In applying this paragraph to any case in which the proceeds of a qualified mortgage issue are used for any refinancing described in subparagraph (A)--

`(i) subsection (a)(2)(D)(i) shall be applied by substituting `12-month period' for `42-month period' each place it appears,

`(ii) subsection (d) (relating to 3-year requirement) shall not apply, and

`(iii) subsection (e) (relating to purchase price requirement) shall be applied by using the market value of the residence at the time of refinancing in lieu of the acquisition cost.

3

`(C) QUALIFIED SUBPRIME LOAN- The term `qualified subprime loan' means an adjustable rate single-family residential mortgage loan originated after December 31, 2001, and before January 1, 2008, that the bond issuer determines would be reasonably likely to cause financial hardship to the borrower if not refinanced.

`(D) TERMINATION- This paragraph shall not apply to any bonds issued after December 31, 2010.'

(b) Increased Volume Cap for Certain Bonds-

(1) IN GENERAL- Subsection (d) of section 146 of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

`(5) INCREASE AND SET ASIDE FOR HOUSING BONDS FOR 2008-

`(A) INCREASE FOR 2008- In the case of calendar year 2008, the State ceiling for each State shall be increased by an amount equal to \$10,000,000,000 multiplied by a fraction--

`(i) the numerator of which is the population of such State (as reported in the most recent decennial census), and

`(ii) the denominator of which is the total population of all States (as reported in the most recent decennial census).

`(B) SET ASIDE-

`(i) IN GENERAL- Any amount of the State ceiling for any State which is attributable to an increase under this paragraph shall be allocated solely for one or more qualified purposes.

`(ii) QUALIFIED PURPOSE- For purposes of this paragraph, the term `qualified purpose' means--

`(I) the issuance of exempt facility bonds used solely to provide qualified residential rental projects, or

`(II) a qualified mortgage issue (determined by substituting `12-month period' for `42-month period' each place it appears in section 143(a)(2)(D)(i)).'

(2) CARRYFORWARD OF UNUSED LIMITATIONS- Subsection (f) of section 146 of such Code is amended by adding at the end the following new paragraph:

`(6) SPECIAL RULES FOR INCREASED VOLUME CAP UNDER SUBSECTION (d)(5)-

`(A) IN GENERAL- No amount which is attributable to the increase under subsection (d)(5) may be used--

`(i) for a carryforward purpose other than a qualified purpose (as defined in subsection (d)(5)), and

`(ii) to issue any bond after calendar year 2010.

`(B) ORDERING RULES- For purposes of subparagraph (A), any carryforward of an issuing authority's volume cap for calendar year 2008 shall be treated as attributable to such increase to the extent of such increase.'

(c) Alternative Minimum Tax-

(1) IN GENERAL- Clause (ii) of section 57(a)(5)(C) of the Internal Revenue Code of 1986 is amended by striking `shall not include' and all that follows and inserting `shall not include--

`(I) any qualified 501(c)(3) bond (as defined in section 145), or

`(II) any qualified mortgage bond (as defined in section 143(a)) or qualified veterans' mortgage bond (as defined in

section 143(b)) issued after the date of the enactment of this subclause and before January 1, 2011.'.

(2) CONFORMING AMENDMENT- The heading for section 57(a)(5)(C)(ii) is amended by striking `QUALIFIED 501(c)(3) BONDS' and inserting `CERTAIN BONDS'.

(d) Effective Date- The amendments made by this section shall apply to bonds issued after the date of the enactment of this title.

## TITLE II--EMERGENCY ASSISTANCE FOR THE REDEVELOPMENT OF ABANDONED AND FORECLOSED HOMES

### SEC. 201. EMERGENCY ASSISTANCE FOR THE REDEVELOPMENT OF ABANDONED AND FORECLOSED HOMES.

(a) Direct Appropriations- There shall be appropriated out of any money in the Treasury not otherwise appropriated for the fiscal year 2008, \$4,000,000,000, to remain available until expended, for assistance to States and units of general local government (as such terms are defined in section 102 of the Housing and Community Development Act of 1974 (42 U.S.C. 5302)) for the redevelopment of abandoned and foreclosed homes.

#### (b) Allocation of Appropriated Amounts-

(1) IN GENERAL- The amounts appropriated or otherwise made available to States and units of general local government under this section shall be allocated based on a funding formula established by the Secretary of Housing and Urban Development.

(2) FORMULA TO BE DEvised SWIFTLY- The funding formula required under paragraph (1) shall be established not later than 60 days after the date of enactment of this title.

(3) CRITERIA- The funding formula required under paragraph (1) shall ensure that any amounts appropriated or otherwise made available under this section are allocated to States and units of general local government with the greatest need, as such need is determined in the discretion of the Secretary based on the following factors:

(A) The number and percentage of home foreclosures in each State or unit of general local government.

(B) The number and percentage of homes financed by a subprime mortgage related loan in each State or unit of general local government.

(C) The number and percentage of homes in default or delinquency in each State or unit of general local government.

(4) DISTRIBUTION- Amounts appropriated or otherwise made available to States and units of general local government under this section shall be distributed according to the funding formula required under paragraph (1) not later than 30 days after the establishment of such formula.

#### (c) Use of Funds-

(1) IN GENERAL- Any State or unit of general local government that receives amounts pursuant to this section shall, not later than 18 months after the receipt of such amounts, use such amounts to redevelop abandoned and foreclosed homes.

(2) PRIORITY- Any State or unit of general local government that receives amounts pursuant to this section shall in distributing such amounts give priority emphasis and consideration to those metropolitan areas, metropolitan cities, urban areas, rural areas, low- and moderate-income areas, and other areas with the greatest need, including those--

(A) with the greatest percentage of home foreclosures;

(B) with the highest percentage of homes financed by a subprime mortgage related loan; or

(C) identified by the State or unit of general local government as likely to face a significant rise in the rate of home foreclosures.

(3) ELIGIBLE USES-

(A) IN GENERAL- Amounts made available under this section may be used to--

(i) make grants, loans, and other financing mechanisms to community development financial institutions (as such term is defined under section 103(5) of the Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4702(5))), national intermediaries, and nonprofit housing or community development organizations and others to purchase and rehabilitate homes that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes;

(ii) establish financing mechanisms for redevelopment of foreclosed upon homes, including such mechanisms as soft-seconds, loan loss reserves, and shared-equity loans for low- and moderate-income homebuyers;

(iii) purchase and rehabilitate homes that have been abandoned or foreclosed upon, in order to sell, rent, or redevelop such homes;

(iv) establish land banks for homes that have been foreclosed upon; and

(v) demolish blighted structures.

(B) LIMITATION- Any funds used under this section for the purchase of an abandoned or foreclosed upon home shall be at a cost equal to or less than the appraised value of the home based on the most up-to-date appraisal, as such appraisal is defined by the Secretary.

(d) Rule of Construction- Amounts appropriated or otherwise made available to States and units of general local government under this section shall be treated as though such funds were community development block grant funds under title I of the Housing and Community Development Act of 1974.

(e) Waiver Authority-

(1) IN GENERAL- In administering any amounts appropriated or otherwise made available under this section, the Secretary of Housing and Urban Development may 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), in order to expedite or facilitate the use of such funds.

(2) LOW AND MODERATE INCOME REQUIREMENT- Notwithstanding the authority of the Secretary under paragraph (1), all of the funds appropriated or otherwise made available under this section shall be used with respect to persons whose income does not exceed 120 percent of area median income.

(f) Emergency Designation- The amounts appropriated under this title are designated as an emergency requirement and necessary to meet emergency needs pursuant to section 204 of S. Con. Res. 21 (110th Congress), the concurrent resolution on the budget for fiscal year 2008.

TITLE III--HOUSING COUNSELING RESOURCES

SEC. 301. HOUSING COUNSELING RESOURCES.

There shall be appropriated out of any money in the Treasury not otherwise appropriated, for an additional amount for the 'Neighborhood Reinvestment Corporation--Payment to the Neighborhood Reinvestment Corporation' \$200,000,000,000, to remain available until September 30, 2008, for foreclosure mitigation activities under the terms and conditions contained in the second paragraph under the heading 'Neighborhood Reinvestment Corporation--Payment to the Neighborhood Reinvestment Corporation' of Public Law 110-161.

TITLE IV--HELPING FAMILIES SAVE THEIR HOME IN BANKRUPTCY ACT

SEC. 401. SHORT TITLE.

This title may be cited as the 'Helping Families Save Their Homes in Bankruptcy Act of 2008'.  
Subtitle A--Minimizing Foreclosures

6

SEC. 411. SPECIAL RULES FOR MODIFICATION OF LOANS SECURED BY RESIDENCES.

(a) In General- Section 1322(b) of title 11, United States Code, is amended--

(1) in paragraph (10), by striking 'and' at the end;

(2) by redesignating paragraph (11) as paragraph (12); and

(3) by inserting after paragraph (10) the following:

'(11) notwithstanding paragraph (2) and otherwise applicable nonbankruptcy law--

'(A) modify an allowed secured claim secured by the debtor's principal residence, as described in subparagraph (B), if, after deduction from the debtor's current monthly income of the expenses permitted for debtors described in section 1325(b)(3) of this title (other than amounts contractually due to creditors holding such allowed secured claims and additional payments necessary to maintain possession of that residence), the debtor has insufficient remaining income to retain possession of the residence by curing a default and maintaining payments while the case is pending, as provided under paragraph (5); and

'(B) provide for payment of such claim--

'(i) for a period not to exceed 30 years (reduced by the period for which the loan has been outstanding) from the date of the order for relief under this chapter; and

'(ii) at a rate of interest accruing after such date calculated at a fixed annual percentage rate, in an amount equal to the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as of the applicable time set forth in the rules of the Board, plus a reasonable premium for risk; and'.

(b) Conforming Amendment- Section 1325(a)(5) of title 11, United States Code, is amended by inserting before 'with respect' the following: 'except as otherwise provided in section 1322(b)(11) of this title,'.

SEC. 412. WAIVER OF COUNSELING REQUIREMENT WHEN HOMES ARE IN FORECLOSURE.

Section 109(h) of title 11, United States Code, is amended by adding at the end the following:

'(5) Paragraph (1) shall not apply with respect to a debtor who files with the court a certification that a foreclosure sale of the debtor's principal residence has been scheduled.'

Subtitle B--Providing Other Debtor Protections

SEC. 421. COMBATING EXCESSIVE FEES.

Section 1322(c) of title 11, the United States Code, is amended--

(1) in paragraph (1), by striking 'and' at the end;

(2) in paragraph (2), by striking the period at the end and inserting '; and'; and

(3) by adding at the end the following:

'(3) to the extent that an allowed secured claim is secured by the debtor's principal residence, the value of which is greater than the amount of such claim, fees, costs, or charges arising during the pendency of the case may be added to secured debt provided for by the plan only if--

`(A) notice of such fees, costs or charges is filed with the court before the expiration of the earlier of--

`(i) 1 year after the time at which they are incurred; or

`(ii) 60 days before the conclusion of the case; and

`(B) such fees, costs, or charges are lawful, reasonable, and provided for in the underlying contract;

`(4) the failure of a party to give notice described in paragraph (3) shall be deemed a waiver of any claim for fees, costs, or charges described in paragraph (3) for all purposes, and any attempt to collect such fees, costs, or charges shall constitute a violation of section 524(a)(2) of this title or, if the violation occurs before the date of discharge, of section 362(a) of this title; and

`(5) a plan may provide for the waiver of any prepayment penalty on a claim secured by the principal residence of the debtor.'

#### SEC. 422. MAINTAINING DEBTORS' LEGAL CLAIMS.

Section 554(e) of title 11, United States Code, is amended by adding at the end the following:

`(e) In any action in State or Federal court with respect to a claim or defense asserted by an individual debtor in such action that was not scheduled under section 521(a)(1) of this title, the trustee shall be allowed a reasonable time to request joinder or substitution as the real party in interest. If the trustee does not request joinder or substitution in such action, the debtor may proceed as the real party in interest, and no such action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest or on the ground that the debtor's claims were not properly scheduled in a case under this title.'

#### SEC. 423. RESOLVING DISPUTES.

Section 1334 of title 28, United States Code, is amended by adding at the end the following: `Notwithstanding any agreement for arbitration that is subject to chapter 1 of title 9, in any core proceeding under section 157(b) of this title involving an individual debtor whose debts are primarily consumer debts, the court may hear and determine the proceeding, and enter appropriate orders and judgments, in lieu of referral to arbitration.'

#### SEC. 424. ENACTING A HOMESTEAD FLOOR FOR DEBTORS OVER 55 YEARS OF AGE.

(a) In General- Section 522(b)(3) of title 11, United States Code, is amended--

(1) in subparagraph (B), by striking `and' at the end;

(2) in subparagraph (C), by striking the period at the end and inserting `; and'; and

(3) by adding at the end and inserting the following:

`(D) if the debtor, as of the date of the filing of the petition, is 55 years old or older, the debtor's aggregate interest, not to exceed \$75,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a principal residence, or in a cooperative that owns property that the debtor or a dependent of the debtor uses as a principal residence.'

(b) Exemption Authority- Section 522(d)(1) of title 11, United States Code, is amended by inserting `or, if the debtor is 55 years of age or older, \$75,000 in value,' before `in real property'.

#### SEC. 425. DISALLOWING CLAIMS FROM VIOLATIONS OF CONSUMER PROTECTION LAWS.

Section 502(b) of title 11, United States Code, is amended--

(1) in paragraph (8), by striking `or' at the end;

(2) in paragraph (9), by striking the period at the end and inserting `; or'; and

8

(3) by adding at the end the following:

`(10) the claim is subject to any remedy for damages or rescission due to failure to comply with any applicable requirement under the Truth in Lending Act (15 U.S.C. 1601 et seq.), or any other provision of applicable State or Federal consumer protection law that was in force when the noncompliance took place, notwithstanding the prior entry of a foreclosure judgment.'

#### TITLE V--MORTGAGE DISCLOSURE IMPROVEMENT ACT

##### SEC. 501. SHORT TITLE.

This title may be cited as the `Mortgage Disclosure Improvement Act of 2008'.

##### SEC. 502. ENHANCED MORTGAGE LOAN DISCLOSURES.

(a) Truth in Lending Act Disclosures- Section 128(b)(2) of the Truth in Lending Act (15 U.S.C. 1638(b)(2)) is amended--

(1) by inserting `(A)' before `In the';

(2) by striking `a residential mortgage transaction, as defined in section 103(w)' and inserting `any extension of credit that is secured by the dwelling of a consumer';

(3) by striking `shall be made in accordance' and all that follows through `extended, or'; and

(4) by striking `If the' and all that follows through the end of the paragraph and inserting the following:

`(B) In the case of an extension of credit that is secured by the dwelling of a consumer, in addition to the other disclosures required by subsection (a), the disclosures provided under this paragraph shall--

`(i) state in conspicuous type size and format, the following: `You are not required to complete this agreement merely because you have received these disclosures or signed a loan application.'; and

`(ii) be furnished to the borrower not later than 7 business days before the date of consummation of the transaction, and at the time of consummation of the transaction, subject to subparagraph (D).

`(C) In the case of an extension of credit that is secured by the dwelling of a consumer, under which the annual rate of interest is variable, or with respect to which the regular payments may otherwise be variable, in addition to the other disclosures required by subsection (a), the disclosures provided under this paragraph shall--

`(i) label the payment schedule as follows: `Payment Schedule: Payments Will Vary Based on Interest Rate Changes'; and

`(ii) state the maximum amount of the regular required payments on the loan, based on the maximum interest rate allowed, introduced with the following language in conspicuous type size and format: `Your payment can go as high as XXX', the blank to be filled in with the maximum possible payment amount.

`(D) In any case in which the disclosure statement provided 7 business days before the date of consummation of the transaction contains an annual percentage rate of interest that is no longer accurate, as determined under section 107(c), the creditor shall furnish an additional, corrected statement to the borrower, not later than 3 business days before the date of consummation of the transaction.'

(b) Civil Liability- Section 130(a) of the Truth in Lending Act (15 U.S.C. 1640(a)) is amended--

(1) in paragraph (2)(A)(iii), by striking `not less than \$200 or greater than \$2,000' and inserting `\$5,000, such amount to be adjusted annually based on the consumer price index, to maintain current value'; and

9

(2) in the penultimate sentence of the undesignated matter following paragraph (4)--

(A) by striking `only for' and inserting `for';

(B) by striking `section 125 or' and inserting `section 122, section 125,';

(C) by inserting `or section 128(b),' after `128(a),'; and

(D) by inserting `or section 128(b)' before the period.

#### TITLE VI--INCENTIVES FOR BUSINESS

### SEC. 601. CARRYBACK OF CERTAIN NET OPERATING LOSSES ALLOWED FOR 5 YEARS; TEMPORARY SUSPENSION OF 90 PERCENT AMT LIMIT.

(a) In General- Subparagraph (H) of section 172(b)(1) of the Internal Revenue Code of 1986 is amended to read as follows:

(H) 5-year CARRYBACK OF CERTAIN LOSSES-

(i) TAXABLE YEARS ENDING DURING 2001 AND 2002- In the case of a net operating loss for any taxable year ending during 2001 or 2002, subparagraph (A)(i) shall be applied by substituting `5' for `2' and subparagraph (F) shall not apply.

(ii) TAXABLE YEARS BEGINNING OR ENDING DURING 2006, 2007, AND 2008- In the case of a net operating loss with respect to any eligible taxpayer (within the meaning of section 168(k)(1)(B)) for any taxable year beginning or ending during 2006, 2007, or 2008--

(I) subparagraph (A)(i) shall be applied by substituting `5' for `2',

(II) subparagraph (E)(ii) shall be applied by substituting `4' for `2', and

(III) subparagraph (F) shall not apply.'

(b) Temporary Suspension of 90 Percent Limit on Certain NOL Carrybacks and Carryovers-

(1) IN GENERAL- Section 56(d) of the Internal Revenue Code of 1986 is amended by adding at the end the following new paragraph:

(3) ADDITIONAL ADJUSTMENTS- For purposes of paragraph (1)(A), in the case of an eligible taxpayer (within the meaning of section 168(k)(1)(B)), the amount described in clause (I) of paragraph (1)(A)(ii) shall be increased by the amount of the net operating loss deduction allowable for the taxable year under section 172 attributable to the sum of--

(A) carrybacks of net operating losses from taxable years beginning or ending during 2006, 2007, and 2008, and

(B) carryovers of net operating losses to taxable years beginning or ending during 2006, 2007, or 2008.'

(2) CONFORMING AMENDMENT- Subclause (I) of section 56(d)(1)(A)(i) of such Code is amended by inserting `amount of such' before `deduction described in clause (ii)(I)'.

(c) Anti-Abuse Rules- The Secretary of Treasury or the Secretary's designee shall prescribe such rules as are necessary to prevent the abuse of the purposes of the amendments made by this section, including anti-stuffing rules, anti-churning rules (including rules relating to sale-leasebacks), and rules similar to the rules under section 1091 of the Internal Revenue Code of 1986 relating to losses from wash sales.

(1) SUBSECTION (a)-

(A) IN GENERAL- Except as provided in subparagraph (B), the amendments made by subsection (a) shall apply to net operating losses arising in taxable years beginning or ending in 2006, 2007, or 2008.

(B) ELECTION- In the case of an eligible taxpayer (within the meaning of section 168(k)(1)(B) of the Internal Revenue Code of 1986) with a net operating loss for a taxable year beginning or ending during 2006 or 2007--

(i) any election made under section 172(b)(3) of the Internal Revenue Code of 1986 may (notwithstanding such section) be revoked before November 1, 2008, and

(ii) any election made under section 172(j) of such Code shall (notwithstanding such section) be treated as timely made if made before November 1, 2008.

(2) SUBSECTION (b)- The amendments made by subsection (b) shall apply to taxable years ending after December 31, 1995.

Calendar No. 577

110th CONGRESS

2d Session

S. 2636

A BILL

To provide needed housing reform.

February 14, 2008

Read the second time and placed on the calendar

Copyright 2008 State Net. All Rights Reserved.





In bill text the following has special meaning  
underline denotes added text  
~~struck out text denotes deleted text~~

**2007 US S 2452**

**AUTHOR:** Dodd

**VERSION:** Introduced

**VERSION DATE:** 12/12/2007

S 2452 IS

110th CONGRESS

1st Session

S. 2452

To amend the Truth in Lending Act to provide protection to consumers with respect to certain high-cost loans, and for other purposes.

IN THE SENATE OF THE UNITED STATES

December 12, 2007

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)) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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.

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) forbearance 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 XXX 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 pre-existing 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 21 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.

Copyright 2008 State Net. All Rights Reser ved.





In bill text the following has special meaning  
underline denotes added text  
~~struck out text denotes deleted text~~

**2007 US S 2136**

**AUTHOR:** Durbin

**VERSION:** Introduced

**VERSION DATE:** 10/03/2007

S 2136 IS

110th CONGRESS

1st Session

S. 2136

To address the treatment of primary mortgages in bankruptcy, and for other purposes.  
IN THE SENATE OF THE UNITED STATES

October 3, 2007

Mr. DURBIN (for himself and Mr. SCHUMER) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

A BILL

To address the treatment of primary mortgages in bankruptcy, and for other purposes.

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 `Helping Families Save Their Homes in Bankruptcy Act of 2007'.  
TITLE I--MINIMIZING FORECLOSURES

SEC. 101. SPECIAL RULES FOR MODIFICATION OF LOANS SECURED BY RESIDENCES.

(a) In General- Section 1322(b) of title 11, United States Code, is amended--

(1) in paragraph (10), by striking `and' at the end;

(2) by redesignating paragraph (11) as paragraph (12); and

(3) by inserting after paragraph (10) the following:

`(11) notwithstanding paragraph (2) and otherwise applicable nonbankruptcy law--

`(A) modify an allowed secured claim secured by the debtor's principal residence, as described in subparagraph (B), if, after deduction from the debtor's current monthly income of the expenses permitted for debtors described in section 1325(b)(3) of this title (other than amounts contractually due to creditors holding such allowed secured claims and additional payments necessary to maintain possession of that residence), the debtor has insufficient remaining income to retain possession of the residence by curing a default and maintaining payments while the case is pending, as provided under paragraph (5); and

`(B) provide for payment of such claim--

`(i) for a period not to exceed 30 years (reduced by the period for which the loan has been outstanding) from the date of the order for relief under this chapter; and

`(ii) at a rate of interest accruing after such date calculated at a fixed annual percentage rate, in an amount equal to the most recently published annual yield on conventional mortgages published by the Board of Governors of the Federal Reserve System, as of the applicable time set forth in the rules of the Board, plus a reasonable premium for risk; and'.

(b) Conforming Amendment- Section 1325(a)(5) of title 11, United States Code, is amended by inserting before `with respect' the following: `except as otherwise provided in section 1322(b)(11) of this title,'.

#### SEC. 102. WAIVER OF COUNSELING REQUIREMENT WHEN HOMES ARE IN FORECLOSURE.

Section 109(h) of title 11, United States Code, is amended by adding at the end the following:

`(5) Paragraph (1) shall not apply with respect to a debtor who files with the court a certification that a foreclosure sale of the debtor's principal residence has been scheduled.'

#### TITLE II--PROVIDING OTHER DEBTOR PROTECTIONS

#### SEC. 201. COMBATING EXCESSIVE FEES.

Section 1322(c) of title 11, the United States Code, is amended--

(1) in paragraph (1), by striking `and' at the end;

(2) in paragraph (2), by striking the period at the end and inserting `; and'; and

(3) by adding at the end the following:

`(3) to the extent that an allowed secured claim is secured by the debtor's principal residence, the value of which is greater than the amount of such claim, fees, costs, or charges arising during the pendency of the case may be added to secured debt provided for by the plan only if--

`(A) notice of such fees, costs or charges is filed with the court before the expiration of the earlier of--

`(i) 1 year after the time at which they are incurred; or

`(ii) 60 days before the conclusion of the case; and

`(B) such fees, costs, or charges are lawful, reasonable, and provided for in the underlying contract;

`(4) the failure of a party to give notice described in paragraph (3) shall be deemed a waiver of any claim for fees, costs, or charges described in paragraph (3) for all purposes, and any attempt to collect such fees, costs, or charges shall constitute a violation of section 524(a)(2) of this title or, if the violation occurs before the date of discharge, of section 362(a) of this title; and

`(5) a plan may provide for the waiver of any prepayment penalty on a claim secured by the principal residence of the debtor.'

#### SEC. 202. MAINTAINING DEBTORS' LEGAL CLAIMS.

Section 554(e) of title 11, United States Code, is amended by adding at the end the following:

`(e) In any action in State or Federal court with respect to a claim or defense asserted by an individual debtor in such action that was not scheduled under section 521(a)(1) of this title, the trustee shall be allowed a reasonable time to **2** request joinder or substitution as the real party in interest. If the trustee does not request joinder or substitution in such

action, the debtor may proceed as the real party in interest, and no such action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest or on the ground that the debtor's claims were not properly scheduled in a case under this title.'

#### SEC. 203. RESOLVING DISPUTES.

Section 1334 of title 28, United States Code, is amended by adding at the end the following: 'Notwithstanding any agreement for arbitration that is subject to chapter 1 of title 9, in any core proceeding under section 157(b) of this title involving an individual debtor whose debts are primarily consumer debts, the court may hear and determine the proceeding, and enter appropriate orders and judgments, in lieu of referral to arbitration.'

#### SEC. 204. ENACTING A HOMESTEAD FLOOR FOR DEBTORS OVER 55 YEARS OF AGE.

(a) In General- Section 522(b)(3) of title 11, United States Code, is amended--

(1) in subparagraph (B), by striking 'and' at the end;

(2) in subparagraph (C), by striking the period at the end and inserting '; and'; and

(3) by adding at the end and inserting the following:

'(D) if the debtor, as of the date of the filing of the petition, is 55 years old or older, the debtor's aggregate interest, not to exceed \$75,000 in value, in real property or personal property that the debtor or a dependent of the debtor uses as a principal residence, or in a cooperative that owns property that the debtor or a dependent of the debtor uses as a principal residence.'

(b) Exemption Authority- Section 522(d)(1) of title 11, United States Code, is amended by inserting 'or, if the debtor is 55 years of age or older, \$75,000 in value,' before 'in real property'.

#### SEC. 205. DISALLOWING CLAIMS FROM VIOLATIONS OF CONSUMER PROTECTION LAWS.

Section 502(b) of title 11, United States Code, is amended--

(1) in paragraph (8), by striking 'or' at the end;

(2) in paragraph (9), by striking the period at the end and inserting '; or'; and

(3) by adding at the end the following:

'(10) the claim is subject to any remedy for damages or rescission due to failure to comply with any applicable requirement under the Truth in Lending Act (15 U.S.C. 1601 et seq.), or any other provision of applicable State or Federal consumer protection law that was in force when the noncompliance took place, notwithstanding the prior entry of a foreclosure judgment.'

Copyright 2008 State Net. All Rights Reserved.





In bill text the following has special meaning  
underline denotes added text  
~~struck out text denotes deleted text~~

**2007 US H 3609**

**AUTHOR:** Miller B

**VERSION:** Introduced

**VERSION DATE:** 09/20/2007

HR 3609 IH

110th CONGRESS

1st Session

H. R. 3609

To amend title 11 of the United States Code with respect to modification of certain mortgages on principal residences, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

September 20, 2007

Mr. MILLER of North Carolina (for himself, Ms. LINDA T. SANCHEZ of California, Mr. FRANK of Massachusetts, Mrs. MALONEY of New York, and Mr. WATT) introduced the following bill; which was referred to the Committee on the Judiciary

A BILL

To amend title 11 of the United States Code with respect to modification of certain mortgages on principal residences, and for other purposes.

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 `Emergency Home Ownership and Mortgage Equity Protection Act of 2007'.

SEC. 2. DETERMINATION OF SECURED STATUS.

Section 506(b) of title 11, the United States Code, is amended by adding at the end the following:

`While a case is pending, no fee, costs, or charges may be added to a debt that is provided for in a chapter 13 plan and is secured by the debtor's principal residence unless the holder of the secured claim gives timely notice of such fee, costs, or charge to the debtor and to the trustee.'.

SEC. 3. LIMITATION OF 1978 EXEMPTION THAT PREVENTS FEDERAL BANKRUPTCY COURTS FROM MAKING MODIFICATIONS TO THE TERMS OF A MORTGAGE ON A DEBTOR'S PRINCIPAL RESIDENCE.

Section 1322(b)(2) of title 11, United States Code, is amended by striking ` , other than a claim secured only by a security interest in real property that is the debtor's principal residence,'.

SEC. 4. MODIFICATION OF CLAIMS SECURED BY DEBTOR'S PRINCIPAL RESIDENCE.

(a) Contents of Plan- Section 1322(b) of title 11, the United States Code, is amended--

- (1) in paragraph (10) by striking `and' at the end,
- (2) by redesignating paragraph (11) as paragraph (12), and
- (3) by inserting after paragraph (10) the following:

`(11) provide for payment of allowed claims secured by the debtor's principal residence consistent with section 1325(a)(5), over a period exceeding the period permitted under section 1322(d); and'.

(b) Confirmation of Plan- Section 1325(b)(5) of title 11, the United States Code, is amended by inserting `except as otherwise provided in section 1322(b),' after `(5)'.

#### SEC. 5. ELIMINATION OF CREDIT COUNSELING REQUIREMENT FOR CHAPTER 13 DEBTORS FACING FORECLOSURE.

Section 109(h) of title 11, United States Code, is amended by adding at the end the following:

`(5) The requirements of paragraph (1) shall not apply with respect to a debtor in a case under chapter 13 who submits to the court a certification that the holder of a claim secured by the debtor's principal residence has initiated a judicial or non-judicial foreclosure on the debtor's principal residence.'

#### SEC. 6. CONFIRMATION OF PLAN.

Section 1325(a) of title 11, the United States Code, is amended--

- (1) in paragraph (8) by striking `and' at the end,
- (2) in paragraph (9) by striking the period at the end and inserting `; and', and
- (3) by inserting after paragraph (9) the following:

`(10) notwithstanding paragraph (5)(B)(i)(I), the holder of a claim that is paid pursuant to section 1322(b)(11) shall retain the lien securing such claim until payment of such claim.'

#### SEC. 7. DISCHARGE.

Section 1328 of title 11, the United States Code, is amended--

- (1) in subsection (a)--

(A) by inserting `(other than payments to holders of allowed claims provided for under section 1322(b)(11)' after `paid' the 1st place it appears, and

(B) in paragraph (1) by inserting `or 1322(b)(11)' after `1322(b)(5)', and

- (2) in subsection (c)(1) by inserting `or 1322(b)(11)' after `1322(b)(5)'.



**ASSEMBLY BILL**

**No. 2594**

---

---

**Introduced by Assembly Members Mullin and Nunez**

February 22, 2008

---

---

An act to amend Section 33334.2 of the Health and Safety Code, relating to redevelopment.

LEGISLATIVE COUNSEL'S DIGEST

AB 2594, as introduced, Mullin. Redevelopment: affordable housing.

The Community Redevelopment Law requires a redevelopment agency to allocate not less than 20% of all taxes the agency receives for the purposes of increasing, improving, and preserving the community's supply of low- and moderate-income housing available at affordable housing cost, as defined, to persons and families of low- or moderate-income, lower income households, very low income households, and extremely low income households unless the agency makes specified findings.

This bill would make technical, nonsubstantive changes to this provision.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 33334.2 of the Health and Safety Code
- 2 is amended to read:
- 3 33334.2. (a) Not less than 20 percent of all taxes that are
- 4 allocated to the agency pursuant to Section 33670 shall be used
- 5 by the agency for the purposes of increasing, improving, and

1 preserving the community’s supply of low- and moderate-income  
2 housing available at affordable housing cost, as defined by Section  
3 50052.5, to persons and families of low or moderate income, as  
4 defined in Section 50093, lower income households, as defined  
5 by Section 50079.5, very low income households, as defined in  
6 Section 50105, and extremely low income households, as defined  
7 by Section 50106, that is occupied by these persons and families,  
8 unless one of the following findings is made annually by resolution:

9 (1) (A) That no need exists in the community to improve,  
10 increase, or preserve the supply of low- and moderate-income  
11 housing, including housing for very low income households in a  
12 manner that would benefit the project area and that this finding is  
13 consistent with the housing element of the community’s general  
14 plan required by Article 10.6 (commencing with Section 65580)  
15 of Chapter 3 of Division 1 of Title 7 of the Government Code,  
16 including its share of the regional housing needs of very low  
17 income households and persons and families of low or moderate  
18 income.

19 (B) This finding shall only be made if the housing element of  
20 the community’s general plan demonstrates that the community  
21 does not have a need to improve, increase, or preserve the supply  
22 of low- and moderate-income housing available at affordable  
23 housing cost to persons and families of low or moderate income  
24 and to very low income households. This finding shall only be  
25 made if it is consistent with the planning agency’s annual report  
26 to the legislative body on implementation of the housing element  
27 required by subdivision (b) of Section 65400 of the Government  
28 Code. No agency of a charter city shall make this finding unless  
29 the planning agency submits the report pursuant to subdivision (b)  
30 of Section 65400 of the Government Code. This finding shall not  
31 take effect until the agency has complied with subdivision (b) of  
32 this section.

33 (2) (A) That some stated percentage less than 20 percent of the  
34 taxes that are allocated to the agency pursuant to Section 33670  
35 is sufficient to meet the housing needs of the community, including  
36 its share of the regional housing needs of persons and families of  
37 low- or moderate-income and very low income households, and  
38 that this finding is consistent with the housing element of the  
39 community’s general plan required by Article 10.6 (commencing

1 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the  
2 Government Code.

3 (B) This finding shall only be made if the housing element of  
4 the community's general plan demonstrates that a percentage of  
5 less than 20 percent will be sufficient to meet the community's  
6 need to improve, increase, or preserve the supply of low- and  
7 moderate-income housing available at affordable housing cost to  
8 persons and families of low or moderate income and to very low  
9 income households. This finding shall only be made if it is  
10 consistent with the planning agency's annual report to the  
11 legislative body on implementation of the housing element required  
12 by subdivision (b) of Section 65400 of the Government Code. No  
13 agency of a charter city shall make this finding unless the planning  
14 agency submits the report pursuant to subdivision (b) of Section  
15 65400 of the Government Code. This finding shall not take effect  
16 until the agency has complied with subdivision (b) of this section.

17 (C) For purposes of making the findings specified in this  
18 paragraph and paragraph (1), the housing element of the general  
19 plan of a city, county, or city and county shall be current, and shall  
20 have been determined by the department pursuant to Section 65585  
21 to be in substantial compliance with Article 10.6 (commencing  
22 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the  
23 Government Code.

24 (3) (A) That the community is making a substantial effort to  
25 meet its existing and projected housing needs, including its share  
26 of the regional housing needs, with respect to persons and families  
27 of low and moderate income, particularly very low income  
28 households, as identified in the housing element of the  
29 community's general plan required by Article 10.6 (commencing  
30 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the  
31 Government Code, and that this effort, consisting of direct financial  
32 contributions of local funds used to increase and improve the  
33 supply of housing affordable to, and occupied by, persons and  
34 families of low or moderate income and very low income  
35 households is equivalent in impact to the funds otherwise required  
36 to be set aside pursuant to this section. In addition to any other  
37 local funds, these direct financial contributions may include federal  
38 or state grants paid directly to a community and that the community  
39 has the discretion of using for the purposes for which moneys in  
40 the Low and Moderate Income Housing Fund may be used. The

1 legislative body shall consider the need that can be reasonably  
2 foreseen because of displacement of persons and families of low  
3 or moderate income or very low income households from within,  
4 or adjacent to, the project area, because of increased employment  
5 opportunities, or because of any other direct or indirect result of  
6 implementation of the redevelopment plan. No finding under this  
7 subdivision may be made until the community has provided or  
8 ensured the availability of replacement dwelling units as defined  
9 in Section 33411.2 and until it has complied with Article 9  
10 (commencing with Section 33410).

11 (B) In making the determination that other financial  
12 contributions are equivalent in impact pursuant to this subdivision,  
13 the agency shall include only those financial contributions that are  
14 directly related to programs or activities authorized under  
15 subdivision (e).

16 (C) The authority for making the finding specified in this  
17 paragraph shall expire on June 30, 1993, except that the expiration  
18 shall not be deemed to impair contractual obligations to  
19 bondholders or private entities incurred prior to May 1, 1991, and  
20 made in reliance on the provisions of this paragraph. Agencies that  
21 make this finding after June 30, 1993, shall show evidence that  
22 the agency entered into the specific contractual obligation with  
23 the specific intention of making a finding under this paragraph in  
24 order to provide sufficient revenues to pay off the indebtedness.

25 (b) Within 10 days following the making of a finding under  
26 either paragraph (1) or (2) of subdivision (a), the agency shall send  
27 the Department of Housing and Community Development a copy  
28 of the finding, including the factual information supporting the  
29 finding and other factual information in the housing element that  
30 demonstrates that either (1) the community does not need to  
31 increase, improve, or preserve the supply of housing for low- and  
32 moderate-income households, including very low income  
33 households, or (2) a percentage less than 20 percent will be  
34 sufficient to meet the community's need to improve, increase, and  
35 preserve the supply of housing for low- and moderate-income  
36 households, including very low income households. Within 10  
37 days following the making of a finding under paragraph (3) of  
38 subdivision (a), the agency shall send the Department of Housing  
39 and Community Development a copy of the finding, including the  
40 factual information supporting the finding that the community is

1 making a substantial effort to meet its existing and projected  
2 housing needs. Agencies that make this finding after June 30, 1993,  
3 *also shall also* submit evidence to the department of its contractual  
4 obligations with bondholders or private entities incurred prior to  
5 May 1, 1991, and made in reliance on this finding.

6 (c) In any litigation to challenge or attack a finding made under  
7 paragraph (1), (2), or (3) of subdivision (a), the burden shall be  
8 upon the agency to establish that the finding is supported by  
9 substantial evidence in light of the entire record before the agency.  
10 If an agency is determined by a court to have knowingly  
11 misrepresented any material facts regarding the community's share  
12 of its regional housing need for low- and moderate-income housing,  
13 including very low income households, or the community's  
14 production record in meeting its share of the regional housing need  
15 pursuant to the report required by subdivision (b) of Section 65400  
16 of the Government Code, the agency shall be liable for all court  
17 costs and plaintiff's attorney's fees, and shall be required to allocate  
18 not less than 25 percent of the agency's tax increment revenues to  
19 its Low and Moderate Income Housing Fund in each year  
20 thereafter.

21 (d) Nothing in this section shall be construed as relieving any  
22 other public entity or entity with the power of eminent domain of  
23 any legal obligations for replacement or relocation housing arising  
24 out of its activities.

25 (e) In carrying out the purposes of this section, the agency may  
26 exercise any or all of its powers for the construction, rehabilitation,  
27 or preservation of affordable housing for extremely low, very low,  
28 low- and moderate-income persons or families, including the  
29 following:

30 (1) Acquire real property or building sites subject to Section  
31 33334.16.

32 (2) (A) Improve real property or building sites with onsite or  
33 offsite improvements, but only if both (i) the improvements are  
34 part of the new construction or rehabilitation of affordable housing  
35 units for low- or moderate-income persons that are directly  
36 ~~benefited~~ *benefitted* by the improvements, and are a reasonable  
37 and fundamental component of the housing units, and (ii) the  
38 agency requires that the units remain available at affordable  
39 housing cost to, and occupied by, persons and families of extremely  
40 low, very low, low, or moderate income for the same time period

1 and in the same manner as provided in subdivision (c) and  
2 paragraph (2) of subdivision (f) of Section 33334.3.

3 (B) If the newly constructed or rehabilitated housing units are  
4 part of a larger project and the agency improves or pays for onsite  
5 or offsite improvements pursuant to the authority in this  
6 subdivision, the agency shall pay only a portion of the total cost  
7 of the onsite or offsite improvement. The maximum percentage  
8 of the total cost of the improvement paid for by the agency shall  
9 be determined by dividing the number of housing units that are  
10 affordable to low- or moderate-income persons by the total number  
11 of housing units, if the project is a housing project, or by dividing  
12 the cost of the affordable housing units by the total cost of the  
13 project, if the project is not a housing project.

14 (3) Donate real property to private or public persons or entities.

15 (4) Finance insurance premiums pursuant to Section 33136.

16 (5) Construct buildings or structures.

17 (6) Acquire buildings or structures.

18 (7) Rehabilitate buildings or structures.

19 (8) Provide subsidies to, or for the benefit of, extremely low  
20 income households, as defined by Section 50106, very low income  
21 households, as defined by Section 50105, lower income  
22 households, as defined by Section 50079.5, or persons and families  
23 of low or moderate income, as defined by Section 50093, to the  
24 extent those households cannot obtain housing at affordable costs  
25 on the open market. Housing units available on the open market  
26 are those units developed without direct government subsidies.

27 (9) Develop plans, pay principal and interest on bonds, loans,  
28 advances, or other indebtedness, or pay financing or carrying  
29 charges.

30 (10) Maintain the community's supply of mobilehomes.

31 (11) Preserve the availability to lower income households of  
32 affordable housing units in housing developments that are assisted  
33 or subsidized by public entities and that are threatened with  
34 imminent conversion to market rates.

35 (f) The agency may use these funds to meet, in whole or in part,  
36 the replacement housing provisions in Section 33413. However,  
37 nothing in this section shall be construed as limiting in any way  
38 the requirements of that section.

39 (g) (1) The agency may use these funds inside or outside the  
40 project area. The agency may only use these funds outside the

1 project area upon a resolution of the agency and the legislative  
2 body that the use will be of benefit to the project. The  
3 determination by the agency and the legislative body shall be final  
4 and conclusive as to the issue of benefit to the project area. The  
5 Legislature finds and declares that the provision of replacement  
6 housing pursuant to Section 33413 is always of benefit to a project.  
7 Unless the legislative body finds, before the redevelopment plan  
8 is adopted, that the provision of low- and moderate-income housing  
9 outside the project area will be of benefit to the project, the project  
10 area shall include property suitable for low- and moderate-income  
11 housing.

12 (2) (A) The Contra Costa County Redevelopment Agency may  
13 use these funds anywhere within the unincorporated territory, or  
14 within the incorporated limits of the City of Walnut Creek on sites  
15 contiguous to the Pleasant Hill BART Station Area Redevelopment  
16 Project area. The agency may only use these funds outside the  
17 project area upon a resolution of the agency and board of  
18 supervisors determining that the use will be of benefit to the project  
19 area. In addition, the agency may use these funds within the  
20 incorporated limits of the City of Walnut Creek only if the agency  
21 and the board of supervisors find all of the following:

22 (i) Both the County of Contra Costa and the City of Walnut  
23 Creek have adopted and are implementing complete and current  
24 housing elements of their general plans that the Department of  
25 Housing and Community Development has determined to be in  
26 compliance with the requirements of Article 10.6 (commencing  
27 with Section 65580) of Chapter 3 of Division 1 of Title 7 of the  
28 Government Code.

29 (ii) The development to be funded shall not result in any  
30 residential displacement from the site where the development is  
31 to be built.

32 (iii) The development to be funded shall not be constructed in  
33 an area that currently has more than 50 percent of its population  
34 comprised of racial minorities or low-income families.

35 (iv) The development to be funded shall allow construction of  
36 affordable housing closer to a rapid transit station than could be  
37 constructed in the unincorporated territory outside the Pleasant  
38 Hill BART Station Area Redevelopment Project.

1 (B) If the agency uses these funds within the incorporated limits  
2 of the City of Walnut Creek, all of the following requirements  
3 shall apply:

4 (i) The funds shall be used only for the acquisition of land for,  
5 and the design and construction of, the development of housing  
6 containing units affordable to, and occupied by, low- and  
7 moderate-income persons.

8 (ii) If less than all the units in the development are affordable  
9 to, and occupied by, low- or moderate-income persons, any agency  
10 assistance shall not exceed the amount needed to make the housing  
11 affordable to, and occupied by, low- or moderate-income persons.

12 (iii) The units in the development that are affordable to, and  
13 occupied by, low- or moderate-income persons shall remain  
14 affordable for a period of at least 55 years.

15 (iv) The agency and the City of Walnut Creek shall determine,  
16 if applicable, whether Article XXXIV of the California Constitution  
17 permits the development.

18 (h) The Legislature finds and declares that expenditures or  
19 obligations incurred by the agency pursuant to this section shall  
20 constitute an indebtedness of the project.

21 (i) This section shall only apply to taxes allocated to a  
22 redevelopment agency for which a final redevelopment plan is  
23 adopted on or after January 1, 1977, or for any area that is added  
24 to a project by an amendment to a redevelopment plan, which  
25 amendment is adopted on or after the effective date of this section.  
26 An agency may, by resolution, elect to make all or part of the  
27 requirements of this section applicable to any redevelopment  
28 project for which a redevelopment plan was adopted prior to  
29 January 1, 1977, subject to any indebtedness incurred prior to the  
30 election.

31 (j) (1) (A) An action to compel compliance with the  
32 requirement of Section 33334.3 to deposit not less than 20 percent  
33 of all taxes that are allocated to the agency pursuant to Section  
34 33670 in the Low and Moderate Income Housing Fund shall be  
35 commenced within 10 years of the alleged violation. A cause of  
36 action for a violation accrues on the last day of the fiscal year in  
37 which the funds were required to be deposited in the Low and  
38 Moderate Income Housing Fund.

39 (B) An action to compel compliance with the requirement of  
40 this section or Section 33334.6 that money deposited in the Low

1 and Moderate Income Housing Fund be used by the agency for  
2 purposes of increasing, improving, and preserving the community's  
3 supply of low- and moderate-income housing available at  
4 affordable housing cost shall be commenced within 10 years of  
5 the alleged violation. A cause of action for a violation accrues on  
6 the date of the actual expenditure of the funds.

7 (C) An agency found to have deposited less into the Low and  
8 Moderate Income Housing Fund than mandated by Section 33334.3  
9 or to have spent money from the Low and Moderate Income  
10 Housing Fund for purposes other than increasing, improving, and  
11 preserving the community's supply of low- and moderate-income  
12 housing, as mandated, by this section or Section 33334.6 shall  
13 repay the funds with interest in one lump sum pursuant to Section  
14 970.4 or 970.5 of the Government Code or may do either of the  
15 following:

16 (i) Petition the court under Section 970.6 for repayment in  
17 installments.

18 (ii) Repay the portion of the judgment due to the Low and  
19 Moderate Income Housing Fund in equal installments over a period  
20 of five years following the judgment.

21 (2) Repayment shall not be made from the funds required to be  
22 set aside or used for low- and moderate-income housing pursuant  
23 to this section.

24 (3) Notwithstanding clauses (i) and (ii) of subparagraph (C) of  
25 paragraph (1), all costs, including reasonable attorney's fees if  
26 included in the judgment, are due and shall be paid upon entry of  
27 judgment or order.

28 (4) Except as otherwise provided in this subdivision, Chapter  
29 2 (commencing with Section 970) of Part 5 of Division 3.6 of Title  
30 1 of the Government Code for the enforcement of a judgment  
31 against a local public entity applies to a judgment against a local  
32 public entity that violates this section.

33 (5) This subdivision applies to actions filed on and after January  
34 1, 2006.

35 (6) The limitations period specified in subparagraphs (A) and  
36 (B) of paragraph (1) does not apply to a cause of action brought  
37 pursuant to Chapter 9 (commencing with Section 860) of Title 10  
38 of Part 2 of the Code of Civil Procedure.

O

**ASSEMBLY BILL**

**No. 1830**

---

---

**Introduced by Assembly Member Lieu**

**(Principal coauthors: Assembly Members Nunez and Ruskin)**

**(Coauthors: Assembly Members Arambula, Bass, Beall, Berg, Brownley, Caballero, Carter, Coto, Davis, De Leon, DeSaulnier, Dymally, Eng, Feuer, Hancock, Hayashi, Huffman, Jones, Karnette, Krekorian, Laird, Leno, Levine, Ma, Mendoza, Mullin, Nava, Price, Salas, Saldana, Solorio, Swanson, Torrico, and Wolk)**

January 23, 2008

---

---

An act to amend Sections 4970, 4973, 4974, 4975, 4977, 4978, 4978.6, and 4979 of, to amend the heading of Division 1.6 (commencing with Section 4970) of, and to add Sections 4973.2 and 4980 to, the Financial Code, relating to loans.

LEGISLATIVE COUNSEL'S DIGEST

AB 1830, as introduced, Lieu. High-cost, subprime, and nontraditional loans.

Existing law imposes certain limitations and prohibitions on licensed persons, including real estate brokers, finance lenders, residential mortgage lenders, and financial institutions, with respect to consumer loans and covered loans. Existing law defines a “consumer loan” as a consumer credit transaction secured by residential real property, subject to certain exceptions, and defines a “covered loan” as a consumer loan that meets certain other requirements. Existing law prohibits a covered loan from including a prepayment penalty after the first 36 months from the date of consumation of the loan but authorizes a covered loan to include a prepayment penalty before that time period if specified conditions are satisfied. Existing law prohibits a covered loan from

being made unless a specified disclosure is provided to the consumer no later than 3 business days prior to signing of the loan documents. Violations of these limitations and prohibitions by licensed persons are deemed to be violations of the person's licensing law and may be punishable by, among other things, disciplinary action, civil liability, and the imposition of administrative penalties and civil penalties up to \$25,000, as specified.

This bill would redefine a "covered loan" as a "high-cost loan," would establish "subprime loans" and "nontraditional loans," as defined, as new categories of regulated loans, and would make various conforming changes to existing law relative to these loans. The bill would prohibit a high-cost loan from including prepayment penalties and from including at origination a payment schedule with regular periodic payments that, when aggregated, do not fully amortize the principal balance as of the maturity date of the loan. The bill would prohibit a person from making a high-cost loan unless at the time the loan is consummated the person believes the consumer will be able to make the scheduled payments, including taxes and insurance and would prohibit a high-cost loan from being originated as a stated income loan, except as specified. The bill would prohibit a person who originates a high-cost loan from receiving a yield spread premium or other incentive compensation and would prohibit a person from originating a high-cost loan unless an escrow or impound account is established for a specified period of time. The bill would delete the provisions requiring a disclosure to be provided to a consumer prior to making a covered loan and would instead prohibit a high-cost loan from being made unless a consumer receives a certificate of certain counseling. The bill would establish similar limitations and prohibitions for subprime and nontraditional loans but would require a specified disclosure to be provided to a consumer before those loans could be made. The bill would authorize a licensing agency to levy administrative penalties in an amount up to \$10,000 against a person who violates the provisions regulating high-cost, subprime, and nontraditional loans and would make a person who makes a willful and knowing violation of those provisions of law liable to the consumer in the amount of \$25,000 or the consumers actual damages, whichever is greater. The bill would authorize private causes of action by a consumer against a licensed person to recover damages for a violation of the provisions regulating high-cost, subprime, or nontraditional loans. The bill would provide that it is a defense against foreclosure on a property secured by a high-cost, subprime, or nontraditional loan if the loan is

in violation of the laws regulating those loans. The bill’s provisions would apply to high-cost, subprime, and nontraditional loans originated on or after January 1, 2009.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The heading of Division 1.6 (commencing with  
2 Section 4970) of the Financial Code is amended to read:

3  
4 DIVISION 1.6. *SUBPRIME LENDING REFORM ACT*  
5

6 SEC. 2. Section 4970 of the Financial Code is amended to read:  
7 4970. For purposes of this division:

8 (a) “Annual percentage rate” means the annual percentage rate  
9 for the loan calculated according to the provisions of the federal  
10 Truth in Lending Act and the regulations adopted thereunder by  
11 the Federal Reserve Board.

12 (b) ~~“Covered loan”~~ “High-cost loan” means a consumer loan  
13 in which the original principal balance of the loan does not exceed  
14 the most current conforming loan limit for a single-family first  
15 mortgage loan established by the Federal National Mortgage  
16 Association in the case of a mortgage or deed of trust, and where  
17 one of the following conditions are met:

18 (1) For a mortgage or deed of trust, the annual percentage rate  
19 at consummation of the transaction will exceed by more than eight  
20 percentage points *for first lien loans, or by more than 10*  
21 *percentage points for subordinate lien loans*, the yield on Treasury  
22 securities having comparable periods of maturity on the 15th day  
23 of the month immediately preceding the month in which the  
24 application for the extension of credit is received by the creditor.

25 (2) The total points and fees payable by the consumer at or  
26 before closing for a mortgage or deed of trust will exceed ~~6~~ 5  
27 percent of the total loan amount.

28 (c) “Subprime loan” or “subprime mortgage” means a loan  
29 secured by a dwelling that is, or will be, the borrower’s principal  
30 dwelling and in which the annual percentage rate exceeds the  
31 greater of either of the following:

1 (1) If the loan is a closed-end loan, the difference between the  
 2 annual percentage rate for the loan and the yield on Treasury  
 3 securities having comparable periods of maturity is either equal  
 4 to or greater than (A) 3 percentage points if the loan is secured  
 5 by a first lien mortgage or deed of trust, or (B) 5 percentage points  
 6 if the loan is secured by a subordinate lien mortgage or deed of  
 7 trust. If the loan is an open-end credit plan, the difference between  
 8 the annual percentage rate for the loan and the yield on Treasury  
 9 securities having comparable periods of maturity is equal to or  
 10 greater than 3 percentage points, regardless of whether the  
 11 open-end credit plan is secured by a first or subordinate lien  
 12 mortgage or deed of trust. Without regard to whether the loan is  
 13 subject to or reportable under the provisions of the federal Home  
 14 Mortgage Disclosure Act (12 U.S.C. Sec. 2801, et seq.) (HMDA),  
 15 the difference between the annual percentage rate and the yield  
 16 on Treasury securities having comparable periods of maturity  
 17 shall be determined using the same procedures and calculation  
 18 methods applicable to loans that are subject to the reporting  
 19 requirements of the HMDA.

20 (2) The difference between the annual percentage rate for the  
 21 loan and the annual yield on conventional mortgages published  
 22 by the Board of Governors of the Federal Reserve System, as  
 23 published in statistical release H.15 or any publication that may  
 24 supersede it, is either equal to or greater than (A) 1.75 percentage  
 25 points, if the loan is secured by a first lien mortgage or deed of  
 26 trust, or (B) 3.75 percentage points, if the loan is secured by a  
 27 subordinate lien mortgage or deed of trust.

28 (d) “Nontraditional loan” or “nontraditional mortgage” means  
 29 mortgage products that allow borrowers to defer payment of  
 30 principal and, sometimes, interest, as set forth in the “Interagency  
 31 Guidance on Nontraditional Mortgage Product Risks” (71 Fed.  
 32 Reg. 58609 (Oct. 4, 2006)).

33 ~~(e)~~

34 (e) (1) “Points and fees” shall include the following:

35 ~~(A)~~

36 (A) All items required to be disclosed as finance charges under  
 37 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal  
 38 Regulations, including the Official Staff Commentary, as amended  
 39 from time to time, except interest.

40 ~~(2)~~

1 ~~(B) All compensation and fees paid to mortgage brokers in~~  
2 ~~connection with the loan transaction paid directly or indirectly to~~  
3 ~~a mortgage broker from any source, including, but not limited to,~~  
4 ~~any payment of a yield spread premium, and including a payment~~  
5 ~~to a mortgage broker that originates a loan in its own name in a~~  
6 ~~table-funded transaction.~~

7 ~~(3)~~

8 (C) All items listed in Section 226.4(c)(7) of Title 12 of the  
9 Code of Federal Regulations, only if the person originating the  
10 covered loan receives direct compensation in connection with the  
11 charge.

12 (2) *“Points and fees” shall not include any of the following:*

13 (A) *Taxes, filing fees, recording fees, and other charges and*  
14 *fees paid or to be paid to public officials for determining the*  
15 *existence of or for perfecting, releasing, or satisfying a security*  
16 *interest.*

17 (B) *Bona fide and reasonable fees paid to a person other than*  
18 *the creditor or an affiliate of the creditor for fees for tax payment*  
19 *services, flood certification, or pest infestation and flood*  
20 *determination, appraisal fees, fees for inspections performed prior*  
21 *to closing, credit report fees, survey fees, attorneys’ fees if the*  
22 *borrower has the right to select the attorney from an approved list*  
23 *or otherwise, notary fees, escrow charges, title insurance*  
24 *premiums, and fire and hazard insurance and flood insurance*  
25 *premiums, provided that the conditions in Section 226.4(d)(2) of*  
26 *Title 12 of the Code of Federal Regulations are met.*

27 ~~(4)~~

28 (f) *“Consumer loan” means a consumer credit transaction that*  
29 *is secured by real property located in this state used, or intended*  
30 *to be used or occupied, as the principal dwelling of the consumer*  
31 *that is improved by a one-to-four residential unit. “Consumer loan”*  
32 *does not include a reverse mortgage, an open line of credit as*  
33 *defined in Part 226 of Title 12 of the Code of Federal Regulations*  
34 *(Regulation Z), or a consumer credit transaction that is secured by*  
35 *rental property or second homes. “Consumer loan” does not include*  
36 *a bridge loan. For purposes of this division, a bridge loan is any*  
37 *temporary loan, having a maturity of one year or less, for the*  
38 *purpose of acquisition or construction of a dwelling intended to*  
39 *become the consumer’s principal dwelling.*

40 ~~(e)~~

1 (g) “Original principal balance” means the total initial amount  
2 the consumer is obligated to repay on the loan.

3 ~~(f)~~

4 (h) “Licensing agency” shall mean the Department of Real  
5 Estate for licensed real estate brokers, the Department of  
6 Corporations for licensed residential mortgage lenders and licensed  
7 finance lenders and brokers, and the Department of Financial  
8 Institutions for commercial and industrial banks and savings  
9 associations and credit unions organized in this state.

10 ~~(g)~~

11 (i) “Licensed person” means a real estate broker licensed under  
12 the Real Estate Law (Part 1 (commencing with Section 10000) of  
13 Division 4 of the Business and Professions Code), a finance lender  
14 or broker licensed under the California Finance Lenders Law  
15 (Division 9 (commencing with Section 22000)), a residential  
16 mortgage lender licensed under the California Residential Mortgage  
17 Lending Act (Division 20 (commencing with Section 50000)), a  
18 commercial or industrial bank organized under the Banking Law  
19 (Division 1 (commencing with Section 99)), a savings association  
20 organized under the Savings Association Law (Division 2  
21 (commencing with Section 5000)), and a credit union organized  
22 under the California Credit Union Law (Division 5 (commencing  
23 with Section 14000)). Nothing in this division shall be construed  
24 to prevent any enforcement by a governmental entity against any  
25 person who originates a loan and who is exempt or excluded from  
26 licensure by all of the licensing agencies, based on a violation of  
27 any provision of this division. Nothing in this division shall be  
28 construed to prevent the Department of Real Estate from enforcing  
29 this division against a licensed salesperson employed by a licensed  
30 real estate broker as if that salesperson were a licensed person  
31 under this division. A licensed person includes any person engaged  
32 in the practice of consumer lending, as defined in this division, for  
33 which a license is required under any other provision of law, but  
34 whose license is invalid, suspended or revoked, or where no license  
35 has been obtained.

36 ~~(h)~~

37 (j) “Originate” means to arrange, negotiate, or make a consumer  
38 loan.

39 ~~(i)~~

1 (k) “Servicer” has the same meaning provided in Section 6 (i)(2)  
2 of the Real Estate Settlement Procedures Act of 1974.

3 (l) “Fully indexed rate” means the index rate prevailing on a  
4 residential mortgage loan at the time the loan is made plus the  
5 margin that will apply after the expiration of any introductory  
6 interest rates.

7 SEC. 3. Section 4973 of the Financial Code is amended to read:  
8 4973. The following are prohibited acts and limitations for  
9 covered *high-cost* loans:

10 (a) ~~(1) A covered *high-cost* loan shall not include a prepayment~~  
11 ~~fee or penalty after the first 36 months after the date of~~  
12 ~~consummation of the loan.~~

13 ~~(2) A covered loan may include a prepayment fee or penalty up~~  
14 ~~to the first 36 months after the date of consummation of the loan~~  
15 ~~if:~~

16 ~~(A) The person who originates the covered loan has also offered~~  
17 ~~the consumer a choice of another product without a prepayment~~  
18 ~~fee or penalty.~~

19 ~~(B) The person who originates the covered loan has disclosed~~  
20 ~~in writing to the consumer at least three business days prior to loan~~  
21 ~~consummation the terms of the prepayment fee or penalty to the~~  
22 ~~consumer for accepting a covered loan with the prepayment penalty~~  
23 ~~and the rates, points, and fees that would be available to the~~  
24 ~~consumer for accepting a covered loan without a prepayment~~  
25 ~~penalty.~~

26 ~~(C) The person who originates the covered loan has limited the~~  
27 ~~amount of the prepayment fee or penalty to an amount not to~~  
28 ~~exceed the payment of six months’ advance interest, at the contract~~  
29 ~~rate of interest then in effect, on the amount prepaid in any~~  
30 ~~12-month period in excess of 20 percent of the original principal~~  
31 ~~amount.~~

32 ~~(D) A covered loan will not impose the prepayment fee or~~  
33 ~~penalty if the covered loan is accelerated as a result of default.~~

34 ~~(E) The person who originates the covered loan will not finance~~  
35 ~~a prepayment penalty through a new loan that is originated by the~~  
36 ~~same person.~~

37 (b) (1) A covered loan with a term of 5 years or less *high-cost*  
38 *loan* may not provide at origination for a payment schedule with  
39 regular periodic payments that when aggregated do not fully  
40 amortize the principal balance as of the maturity date of the loan.

1 (2) For a payment schedule that is adjusted to account for the  
 2 seasonal or irregular income of the consumer, the total installments  
 3 in any year shall not exceed the amount of one year’s worth of  
 4 payments on the loan. This prohibition does not apply to a bridge  
 5 loan. For purposes of this paragraph, “bridge loan” means a loan  
 6 with a maturity of less than 18 months that only requires payments  
 7 of interest until the time when the entire unpaid balance is due and  
 8 payable.

9 (c) ~~A covered high-cost loan shall not contain a provision for~~  
 10 ~~negative amortization such that the payment schedule for regular~~  
 11 ~~monthly payments causes the principal balance to increase, unless~~  
 12 ~~the covered loan is a first mortgage and the person who originates~~  
 13 ~~the loan discloses to the consumer that the loan contains a negative~~  
 14 ~~amortization provision that may add principal to the balance of~~  
 15 ~~the loan.~~

16 (d) ~~A covered high-cost loan shall not include terms under which~~  
 17 ~~periodic payments required under the loan are consolidated and~~  
 18 ~~paid in advance from the loan proceeds.~~

19 (e) ~~A covered high-cost loan shall not contain a provision that~~  
 20 ~~increases the interest rate as a result of a default. This provision~~  
 21 ~~does not apply to interest rate changes in a variable rate loan~~  
 22 ~~otherwise consistent with the provisions of the loan documents,~~  
 23 ~~provided the change in the interest rate is not triggered by the event~~  
 24 ~~of default or the acceleration for the indebtedness.~~

25 (f) (1) ~~A person who originates covered high-cost loans shall~~  
 26 ~~not make or arrange a covered high-cost loan unless at the time~~  
 27 ~~the loan is consummated, the person reasonably believes the~~  
 28 ~~consumer, or consumers, when considered collectively in the case~~  
 29 ~~of multiple consumers, will be able to make the scheduled~~  
 30 ~~payments, including taxes and insurance at the fully indexed rate,~~  
 31 ~~to repay the obligation based upon a consideration of their current~~  
 32 ~~and expected income, current obligations, employment status, and~~  
 33 ~~other financial resources, other than the consumer’s equity in the~~  
 34 ~~dwelling that secures repayment of the loan. In the case of a~~  
 35 ~~covered high-cost loan that is structured to increase to a specific~~  
 36 ~~designated rate, stated as a number or formula, at a specific~~  
 37 ~~predetermined date not exceeding 37 months from the date of~~  
 38 ~~application, this evaluation shall be based upon the fully indexed~~  
 39 ~~rate of the loan calculated at the time of application.~~

1 The consumer shall be presumed to be able to make the  
2 scheduled payments to repay the obligation if, at the time the loan  
3 is consummated, the consumer's total monthly debts, including  
4 amounts owed under the loan, do not exceed ~~55~~ 45 percent of the  
5 consumer's monthly gross income, as verified by the credit  
6 application, the consumer's financial statement, a credit report,  
7 financial information provided to the person originating the loan  
8 by or on behalf of the consumer, or any other reasonable means.

9 ~~(2) No presumption of inability to make the scheduled payments  
10 to repay the obligation shall arise solely from the fact that at the  
11 time the loan is consummated, the consumer's total monthly debts,  
12 including amounts owed under the loan, exceed 55 percent of the  
13 consumer's monthly gross income.~~

14 (3)

15 (2) In the case of a stated income loan, the reasonable belief  
16 requirement in paragraph (1) shall apply, however, for stated  
17 income loans that belief may be based on the income ~~stated by the~~  
18 ~~consumer, and other information in the possession of the person~~  
19 ~~originating the loan after the solicitation of all information that the~~  
20 ~~person customarily solicits in connection with loans of this type~~  
21 ~~verified by using tax records, bank statements, payroll receipts,~~  
22 ~~or other reasonable documentation from a third party.~~ A person  
23 shall not knowingly or willfully originate a ~~covered~~ *high-cost* loan  
24 as a stated income loan with the intent, or effect, of evading the  
25 provisions of this subdivision. *A high-cost loan shall not be*  
26 *originated as a stated income loan based solely on a consumer's*  
27 *statement of income.*

28 (g) A person who originates a ~~covered~~ *high-cost* loan shall not  
29 pay a contractor under a home-improvement contract from the  
30 proceeds of a ~~covered~~ *high-cost* loan other than by an instrument  
31 payable to the consumer or jointly to the consumer and the  
32 contractor or, at the election of the consumer, to a third-party  
33 escrow agent for the benefit of the contractor in accordance with  
34 terms and conditions established in a written escrow agreement  
35 signed by the consumer, the person who originates a ~~covered~~  
36 *high-cost* loan, and the contractor prior to the disbursement of  
37 funds. No payments, other than progress payments for  
38 home-improvement work that the consumer certifies is completed,  
39 shall be made to an escrow account or jointly to the consumer and  
40 the contractor unless the person who originates the loan is presented

1 with a signed and dated completion certificate by the consumer  
2 showing that the home-improvement contract was completed to  
3 the satisfaction of the consumer.

4 (h) It is unlawful for a person who originates a ~~covered~~ *high-cost*  
5 loan to recommend or encourage a consumer to default on an  
6 existing consumer loan or other debt in connection with the  
7 solicitation or making of a ~~covered~~ *high-cost* loan that refinances  
8 all or any portion of the existing consumer loan or debt.

9 (i) A ~~covered~~ *high-cost* loan shall not contain a call provision  
10 that permits the lender, in its sole discretion, to accelerate the  
11 indebtedness. This prohibition does not apply if repayment of the  
12 loan has been accelerated in accordance with the terms of the loan  
13 documents (1) as a result of the consumer’s default, (2) pursuant  
14 to a due-on-sale provision, or (3) due to fraud or material  
15 misrepresentation by a consumer in connection with the loan or  
16 the value of the security for the loan.

17 (j) A person who originates a ~~covered~~ *high-cost* loan shall not  
18 refinance or arrange for the refinancing of a consumer loan such  
19 that the new loan is a ~~covered~~ *high-cost* loan that is made for the  
20 purpose of refinancing, debt consolidation or cash out, that does  
21 not result in an ~~identifiable~~ *a net tangible* benefit to the consumer,  
22 considering the consumer’s stated purpose for seeking the loan,  
23 fees, interest rates, finance charges, and points.

24 ~~(k) (1) A covered loan shall not be made unless the following~~  
25 ~~disclosure, written in 12-point font or larger, has been provided to~~  
26 ~~the consumer no later than three business days prior to signing of~~  
27 ~~the loan documents of the transaction:~~

28  
29 ~~CONSUMER CAUTION AND HOME OWNERSHIP~~  
30 ~~COUNSELING NOTICE~~  
31

32 ~~If you obtain this loan, the lender will have a mortgage on your~~  
33 ~~home. You could lose your home, and any money you have put~~  
34 ~~into it, if you do not meet your obligations under the loan.~~

35 ~~Mortgage loan rates and closing costs and fees vary based on~~  
36 ~~many other factors, including your particular credit and financial~~  
37 ~~circumstances, your earnings history, the loan-to-value requested,~~  
38 ~~and the type of property that will secure your loan. Higher rates~~  
39 ~~and fees may be justified depending on the individual~~

1 circumstances of a particular consumer's application. You should  
2 shop around and compare loan rates and fees.

3 This particular loan may have a higher rate and total points and  
4 fees than other mortgage loans and is, or may be, subject to the  
5 additional disclosure and substantive protections under Division  
6 1.6 (commencing with Section 4970) of the Financial Code. You  
7 should consider consulting a qualified independent credit counselor  
8 or other experienced financial adviser regarding the rate, fees, and  
9 provisions of this mortgage loan before you proceed. For  
10 information on contacting a qualified credit counselor, ask your  
11 lender or call the United States Department of Housing and Urban  
12 Development's counseling hotline at 1-888-466-3487 or go to  
13 [www.hud.gov/fha/sfh/hec](http://www.hud.gov/fha/sfh/hec) for a list of counselors.

14 You are not required to complete any loan agreement merely  
15 because you have received these disclosures or have signed a loan  
16 application.

17 If you proceed with this mortgage loan, you should also  
18 remember that you may face serious financial risks if you use this  
19 loan to pay off credit card debts and other debts in connection with  
20 this transaction and then subsequently incur significant new credit  
21 card charges or other debts. If you continue to accumulate debt  
22 after this loan is closed and then experience financial difficulties,  
23 you could lose your home and any equity you have in it if you do  
24 not meet your mortgage loan obligations.

25 Property taxes and homeowner's insurance are your  
26 responsibility. Not all lenders provide escrow services for these  
27 payments. You should ask your lender about these services.

28 Your payments on existing debts contribute to your credit ratings.  
29 You should not accept any advice to ignore your regular payments  
30 to your existing creditors.

31 (2) It shall be a rebuttable presumption that a licensed person  
32 has met its obligation to provide this disclosure if the consumer  
33 provides the licensed person with a signed acknowledgment of  
34 receipt of a copy of the notice set forth in paragraph (1).

35 (k) A person who originates a high-cost loan shall not receive,  
36 directly or indirectly, any incentive compensation, including a  
37 yield spread premium, that is based on, or varies with, the terms  
38 of any high-cost loan.

39 (l) A licensed person shall not originate a high-cost loan unless  
40 the licensed person requires and collects the monthly escrow of

1 *property taxes and hazard insurance calculated in accordance*  
2 *with the requirements of Section 2609 of Title 12 of the United*  
3 *States Code and regulations promulgated pursuant thereto. The*  
4 *provisions of this paragraph do not apply to a high-cost loan that*  
5 *is secured by a subordinate lien when the taxes and insurance are*  
6 *escrowed through another loan.*

7 *(m) A licensed person shall not originate a high-cost loan unless*  
8 *an escrow or impound account is established that remains in*  
9 *existence for a minimum period of five years or until the consumer*  
10 *has sufficient equity in the dwelling securing the loan that private*  
11 *mortgage insurance is not required.*

12 *(n) A licensed person shall not originate a high-cost loan unless*  
13 *the consumer provides certification from a housing counselor*  
14 *approved by the United States Department of Housing and Urban*  
15 *Development that the consumer received counseling on the*  
16 *advisability of the loan transaction.*

17 ~~(t)~~

18 *(o) (1) A person who originates a ~~covered~~ high-cost loan shall*  
19 *not steer, counsel, or direct any prospective consumer to accept a*  
20 *loan product with a risk grade less favorable than the risk grade*  
21 *that the consumer would qualify for based on that person's then*  
22 *current underwriting guidelines, prudently applied, considering*  
23 *the information available to that person, including the information*  
24 *provided by the consumer.*

25 ~~A person shall not be deemed to have violated this section if the~~  
26 ~~risk grade determination applied to a consumer is reasonably based~~  
27 ~~on the person's underwriting guidelines if it is an appropriate risk~~  
28 ~~grade category for which the consumer qualifies with the person.~~

29 *(2) If a broker originates a ~~covered~~ high-cost loan, the broker*  
30 *shall not steer, counsel, or direct any prospective consumer to*  
31 *accept a loan product at a higher cost than that for which the*  
32 *consumer could qualify based on the loan products offered by the*  
33 *persons with whom the broker regularly does business.*

34 ~~(m)~~

35 *(p) A person who originates a ~~covered~~ high-cost loan shall not*  
36 *avoid, or attempt to avoid, the application of this division by doing*  
37 *the following:*

38 *(1) Structuring a loan transaction as an open-end credit plan for*  
39 *the purpose of evading the provisions of this division when the*

1 loan would have been a ~~covered~~ *high-cost* loan if the loan had been  
2 structured as a closed end loan.

3 (2) Dividing any loan transaction into separate parts for the  
4 purpose of evading the provisions of this division.

5 ~~(n)~~

6 (q) A person who originates a ~~covered~~ *high-cost* loan shall not  
7 act in any manner, whether specifically prohibited by this section  
8 or of a different character, that constitutes fraud.

9 SEC. 4. Section 4973.2 is added to the Financial Code, to read:

10 4973.2. The following are prohibited acts and limitations for  
11 subprime and nontraditional loans:

12 (a) A licensed person shall not originate a subprime or  
13 nontraditional loan unless at the time the loan is consummated,  
14 the licensed person reasonably believes the consumer, or  
15 consumers, when considered collectively in the case of multiple  
16 consumers, will be able to make the scheduled loan payments, real  
17 estate tax payments, and insurance payments associated with the  
18 loan.

19 (b) (1) A licensed person shall base its determination of the  
20 consumer's ability to pay on documentation of all sources of  
21 income verified by tax returns, payroll receipts, bank records, or  
22 the best and most appropriate form of documentation available,  
23 and the debt-to-income ratio, the consumer's residual income after  
24 payment of current expenses, and the proposed loan payments.

25 (2) A statement provided by the consumer of the income and  
26 financial resources of the consumer, without other documentation  
27 referred to in this subdivision, is not sufficient verification for  
28 purposes of assessing the ability of the consumer to pay.

29 (3) The calculation assumptions used in evaluating the ability  
30 to repay a subprime or nontraditional loan shall include the  
31 following:

32 (A) The monthly payment amounts based on, at a minimum,  
33 the fully indexed rate, assuming a fully amortizing repayment  
34 schedule, as well as amounts for taxes and insurance.

35 (B) Verification of all sources of income, as provided in  
36 paragraph (1).

37 (4) With regard to subprime and nontraditional loans, there is  
38 a rebuttable presumption that a mortgage was made without regard  
39 to repayment ability if, at the time the loan is consummated, the  
40 consumer's total monthly debts, including total monthly housing

1 payments, taxes, property and private mortgage insurance, any  
2 required homeowner or condominium fees, and any subordinate  
3 mortgages including those that will be made contemporaneously  
4 to the same consumer, exceed 45 percent of the consumer's  
5 monthly gross income established. To rebut the presumption of  
6 inability to repay, the licensed person shall, at minimum, determine  
7 and consider the consumer's residual income after payment of  
8 current expenses and proposed loan payments. However, no  
9 presumption of ability to make the scheduled payments to repay  
10 the obligation shall arise solely from the fact that, at the time the  
11 loan is consummated, the consumer's total monthly debts, including  
12 amounts owed under the loan, do not exceed 45 percent of the  
13 consumer's monthly gross income.

14 (c) (1) A subprime loan or nontraditional loan shall not include  
15 a prepayment fee or penalty.

16 (2) A consumer loan that is not a subprime or nontraditional  
17 loan and that has an adjustable interest rate shall not include a  
18 prepayment fee or penalty within six months of the date of the first  
19 interest rate adjustment for the loan.

20 (d) (1) A person originating a subprime or nontraditional loan  
21 shall not refinance or arrange for the refinancing of a consumer  
22 loan such that the new loan is a subprime or nontraditional loan  
23 that is made for the purpose of refinancing, debt consolidation or  
24 cash out, that does not result in a net tangible benefit to the  
25 consumer, considering all of the circumstances, including, but not  
26 limited to, the terms of both the new and refinanced loans, the cost  
27 of the new loan including, fees, interest rates, finance charges, and  
28 points, and the consumer's individual circumstances.

29 (2) For a period of one year after the consummation of a  
30 subprime or nontraditional loan originated by a licensed person to  
31 a consumer, neither the licensed person who made the loan, nor  
32 any licensed person who holds the loan, or an affiliate of either,  
33 shall engage in direct marketing or initiate any communication  
34 with the consumer regarding refinancing. "Direct marketing" and  
35 "communication" shall include any communication directed at a  
36 specific person without the use of intervening media, including,  
37 but not limited to, the following methods: telephone, electronic  
38 mail, United States mail or other form of courier service, and  
39 in-person communication. This paragraph shall not restrict a

1 licensed person from responding to specific consumer inquires  
2 regarding refinancing.

3 (e) In connection with a subprime or nontraditional loan, a  
4 licensed person shall not steer, counsel, or direct a consumer to a  
5 loan with rates, charges, principal amount, or prepayment terms  
6 that are more costly than that for which the consumer qualifies.

7 (f) (1) A licensed person shall not receive, directly or indirectly,  
8 any incentive compensation, including a yield spread premium,  
9 for originating a subprime or nontraditional loan with an interest  
10 rate above the wholesale par rate for which the consumer qualifies.

11 (2) Notwithstanding paragraph (1), in a consumer loan other  
12 than a subprime or nontraditional loan, a licensed person may  
13 receive compensation in the form of an increased rate not to exceed  
14 200 basis points above the par rate for which the consumer qualifies  
15 if:

16 (A) The licensed person receives no other compensation,  
17 however denominated, directly or indirectly, from the consumer  
18 or from another licensed person.

19 (B) The loan does not include discount points, origination points,  
20 or rate reduction points, however denominated, or any payment  
21 reduction fee, however denominated, or any other fees or charges  
22 except bona fide and reasonable charges itemized in Section  
23 226.4(c)(7) of Title 12 of the Code of Federal Regulations,  
24 provided they are payable to a third party unaffiliated with the  
25 licensed person.

26 (C) The loan does not include a prepayment penalty.

27 (g) A subprime or nontraditional loan shall not contain a  
28 provision that increases the interest rate as a result of a default.  
29 This provision does not apply to interest rate changes in a variable  
30 rate loan otherwise consistent with the provisions of the loan  
31 documents, provided the change in the interest rate is not triggered  
32 by an event of default or the acceleration of the indebtedness.

33 (h) A subprime or nontraditional loan shall not contain a call  
34 provision that permits the lender, in its sole discretion, to accelerate  
35 the indebtedness. This prohibition does not apply if repayment of  
36 the loan has been accelerated in accordance with the terms of the  
37 loan documents (1) as a result of the borrower's default, (2)  
38 pursuant to a due-on-sale provision, or (3) due to fraud or material  
39 misrepresentation by a consumer in connection with the loan or  
40 the value of the security for the loan.

1 (i) It is unlawful for a person who originates a subprime or  
2 nontraditional loan to recommend or encourage a consumer to  
3 default on an existing consumer loan or other debt in connection  
4 with the solicitation or making of a subprime or nontraditional  
5 loan that refinances all or any portion of the existing consumer  
6 loan or debt.

7 (j) (1) A licensed person shall not originate a subprime or  
8 nontraditional loan unless the licensed person requires and collects  
9 the monthly escrow of property taxes and hazard insurance  
10 calculated in accordance with the requirements of Section 2609  
11 of Title 12 of the United States Code and regulations promulgated  
12 pursuant thereto. The provisions of this paragraph do not apply to  
13 a subprime or nontraditional loan that is secured by a subordinate  
14 lien when the taxes and insurance are escrowed through another  
15 loan.

16 (2) An escrow or impound account established pursuant to  
17 paragraph (1) shall remain in existence for a minimum period of  
18 five years and until the consumer has sufficient equity in the  
19 dwelling securing the subprime or nontraditional loan so that  
20 private mortgage insurance is no longer required, unless the  
21 underlying mortgage establishing the account is terminated.

22 (k) (1) A subprime or nontraditional loan shall not be made  
23 unless the following disclosure, written in 12-point typeface or  
24 larger, has been provided to the consumer no later than three  
25 business days prior to signing of the loan documents of the  
26 transaction:

27 **CONSUMER CAUTION NOTICE**

28 Because you are receiving this notice, it is likely that this  
29 particular loan is a “subprime loan” that has a higher interest  
30 rate than other mortgage loans and is intended for people with  
31 less than excellent credit, or a “nontraditional loan,” such as  
32 a no interest loan or a payment option ARM, that are both  
33 subject to specific disclosure requirements and protections  
34 under California law (Division 1.6 (commencing with Section  
35 4970) of the Financial Code). Federal regulators have noted  
36 the risky nature of the features of these loans.

37 You are not required to complete any loan agreement merely  
38 because you have received these disclosures or have signed a  
39 loan application.

1 If you proceed with this mortgage loan, you should also  
2 remember that you may face serious financial risks if you use  
3 this loan to pay off credit card debts and other debts in  
4 connection with this transaction and then subsequently incur  
5 significant new credit card charges or other debts. If you  
6 continue to accumulate debt after this loan is closed and then  
7 experience financial difficulties, you could lose your home  
8 and any equity you have in it if you do not meet your mortgage  
9 loan obligations.

10 You should consider consulting a qualified independent credit  
11 counselor or other experienced financial adviser regarding the  
12 rate, fees, and provisions of this mortgage loan before you  
13 proceed. For information on contacting a qualified credit  
14 counselor, ask your lender or call the United States Department  
15 of Housing and Urban Development's counseling hotline at  
16 1 - 8 0 0 - 5 6 9 - 4 2 8 7 o r g o t o  
17 www.hud.gov/offices/hsg/sfh/hcc/hccprof14.cfm for a list of  
18 counselors.

19  
20 (2) It shall be a rebuttable presumption that a licensed person  
21 has met its obligation to provide the disclosure required by  
22 paragraph (1) if the consumer provides the licensed person with a  
23 signed acknowledgment of receipt of a copy of that disclosure.

24 (l) It shall be a violation of this division for any person to  
25 attempt in bad faith to avoid the application of this division by  
26 dividing any loan transaction into separate parts or otherwise  
27 structuring a loan transaction for the purpose of evading the  
28 provisions of this division or by engaging in any other subterfuge  
29 with the intent of evading any provision of this division.

30 (m) A licensed person shall not make or cause to be made,  
31 directly or indirectly, any false, deceptive, or misleading statement,  
32 representation, or omission in connection with a subprime or  
33 nontraditional loan.

34 (n) A licensed person shall not finance, directly or indirectly,  
35 into a subprime or nontraditional loan, or finance to the same  
36 consumer within 30 days of consummation of the loan, any credit  
37 life, credit disability, credit property, or credit unemployment  
38 insurance premiums, or any debt cancellation or suspension  
39 agreement fees, provided that credit insurance premiums, debt  
40 cancellation, or suspension fees calculated and paid on a monthly

1 basis shall not be considered financed by the person originating  
2 the loan. For purposes of this section, credit insurance does not  
3 include a contract issued by a government agency or private  
4 mortgage insurance company to insure the lender against loss  
5 caused by a mortgagor's default.

6 (o) A subprime or nontraditional loan shall not contain a  
7 provision for negative amortization such that the payment schedule  
8 for regular monthly payments causes the principal balance to  
9 increase.

10 SEC. 5. Section 4974 of the Financial Code is amended to read:

11 4974. (a) Any compliance failure that was not willful or  
12 intentional and resulted from a bona fide error, that occurred  
13 notwithstanding the maintenance of procedures reasonably adopted  
14 to avoid those errors, including, but not limited to, those involving  
15 clerical, calculation, computer malfunction and programming, and  
16 printing errors shall be corrected no later than 45 days after receipt  
17 of the complaint or discovery of the error. A person who originates  
18 ~~a covered~~ *high-cost, subprime, or nontraditional* loan shall not be  
19 administratively, civilly, or criminally liable for a bona fide error  
20 corrected pursuant to this section.

21 (b) If a person who originates ~~covered~~ *high-cost, subprime, or*  
22 *nontraditional* loans makes a loan where the person knew, *or*  
23 *should have known*, of and showed reckless disregard for a  
24 violation of this division by a broker, the person and broker shall  
25 be jointly and severally liable for all damages awarded under this  
26 division with respect to the broker's unlawful conduct.

27 This section does not impose or transfer liability for a breach of  
28 the broker's fiduciary duty.

29 SEC. 6. Section 4975 of the Financial Code is amended to read:

30 4975. (a) (1) Any licensed person who violates any provision  
31 of Section 4973, 4973.2, 4979.6, or 4979.7 shall be deemed to  
32 have violated that person's licensing law.

33 (2) After a knowing and willful violation, the licensing agency  
34 may bring a proceeding to suspend the license of the licensed  
35 person for not less than six months and not more than three years.

36 (b) After a knowing and willful violation resulting in a second  
37 or subsequent administrative or civil action, the licensing agency  
38 may bring a proceeding to permanently revoke the license of the  
39 licensed person or impose any lesser licensed sanction for at least  
40 three years.

1 (c) A licensing agency may exercise any and all authority and  
2 powers available to it under any other provisions of law, to  
3 administer and enforce this division including, but not limited to,  
4 investigating and examining the licensed person's books and  
5 records, and charging and collecting the reasonable costs for these  
6 activities. The licensing agency shall not charge a licensed person  
7 twice for the same service. Any civil, criminal, and administrative  
8 authority and remedies available to the licensing agency pursuant  
9 to its licensing law may be sought and employed in any  
10 combination deemed advisable by the licensing agency to enforce  
11 the provisions of this division.

12 (d) Nothing in this section shall be construed to impair or impede  
13 a licensing agency's authority under any other provision of law.

14 SEC. 7. Section 4977 of the Financial Code is amended to read:

15 4977. (a) A licensing agency may, after appropriate notice and  
16 opportunity for hearing, by order levy administrative penalties  
17 against a person who violates any provision of this division, and  
18 the person shall be liable for administrative penalties of not more  
19 than ~~two thousand five hundred dollars (\$2,500)~~ *ten thousand*  
20 *dollars (\$10,000)* for each violation. Except for licensing agencies  
21 exempt from the provisions of the Administrative Procedure Act,  
22 any hearing shall be held in accordance with the Administrative  
23 Procedure Act (Chapter 5 (commencing with Section 11500) of  
24 Part 1 of Division 3 of Title 2 of the Government Code), and the  
25 licensing agency shall have all the powers granted under that act.

26 (b) Any person who willfully and knowingly violates any  
27 provision of this division shall be liable for a civil penalty of not  
28 more than twenty-five thousand dollars (\$25,000) for each violation  
29 which shall be assessed and recovered in a civil action brought in  
30 the name of the people of the State of California by the licensing  
31 agency in any court of competent jurisdiction.

32 (c) Nothing in this section requires exhaustion of administrative  
33 remedies prior to an injured party bringing a civil action.

34 (d) If the licensing agency determines that it is in the public  
35 interest, the licensing agency may include, in any action for  
36 penalties authorized by subdivision (b), a claim for relief in  
37 addition to the penalties, including a claim for restitution or  
38 disgorgement, and the court shall have jurisdiction to award the  
39 additional relief.

1 (e) Nothing in this section shall be construed to impair or impede  
2 the Attorney General from representing a licensing agency in  
3 bringing an action to enforce this division at the request and on  
4 behalf of the licensing agency.

5 (f) In any action brought by the licensing agency, or the Attorney  
6 General acting at the request and on behalf of the licensing agency,  
7 under this division in which a judgment against a person is  
8 rendered, the licensing agency or the Attorney General shall be  
9 entitled to recover costs which, in the discretion of the court, may  
10 include an amount representing reasonable attorney's fees and  
11 investigative expenses for services rendered for deposit in the  
12 appropriate fund of that licensing agency.

13 (g) The amounts collected under subdivisions (a) and (b) shall  
14 be deposited in the appropriate fund of the licensing agency to be  
15 used by that licensing agency, subject to appropriation by the  
16 Legislature, for the purposes of *financial literacy* education and  
17 enforcement in connection with abusive lending practices.

18 SEC. 8. Section 4978 of the Financial Code is amended to read:

19 4978. (a) A person who fails to comply with the provisions  
20 of this division is civilly liable to the consumer in an amount equal  
21 to any actual damages suffered by the consumer, plus attorneys  
22 fees and costs. For a willful and knowing violation of this division,  
23 the person shall be liable to the consumer in the amount of ~~fifteen~~  
24 ~~thousand dollars (\$15,000)~~ *twenty-five thousand dollars (\$25,000)*  
25 or the consumers actual damages, whichever is greater, plus  
26 attorneys fees and costs.

27 (b) (1) If a provision in a contract in a ~~covered~~ *high-cost* loan  
28 violates ~~subdivision (a), (b), (c), (d), (e), or (i) of Section 4973, or~~  
29 *a provision in a contract in a subprime or nontraditional loan*  
30 *violates Section 4973.2, or a provision in a contract of any of those*  
31 *loans violates Section 4979.6, or Section 4979.7, that provision is*  
32 *unenforceable. A court in which any action is brought by, or on*  
33 *behalf of, an aggrieved consumer for relief may issue an order or*  
34 *injunction to reform the terms of the ~~covered~~ *high-cost, subprime,**  
35 *or nontraditional loan to conform to the provisions of this division.*

36 (2) A court may, in addition to any other remedy, award punitive  
37 damages to the consumer upon a finding that such damages are  
38 warranted pursuant to Section 3294 of the Civil Code.

1 (c) Nothing in this section is intended, nor shall be construed,  
2 to abrogate existing common law provisions prohibiting double  
3 recovery of damages.

4 (d) *Without regard to whether a consumer is acting individually,*  
5 *jointly, or on behalf of others similarly situated, any provision in*  
6 *a contract of a high-cost, subprime, or nontraditional loan that*  
7 *allows a party to require the consumer to assert any claim or*  
8 *defense in a forum that is less convenient, more costly, or more*  
9 *dilatory for the resolution of a dispute than a judicial forum*  
10 *established in this state where the consumer may otherwise*  
11 *properly bring a claim or defense or that limits in any way any*  
12 *claim or defense the consumer may have is unconscionable and*  
13 *void.*

14 (e) *Any provision in a contract of a high-cost, subprime, or*  
15 *nontraditional loan that purports to waive the consumer's right*  
16 *to participate in a class action, or to pursue any claims in a class*  
17 *action or other consolidated or joint action, is unconscionable*  
18 *and void.*

19 (f) *In addition to any other enforcement provisions provided*  
20 *under this division, a consumer may bring a private cause of action*  
21 *against any licensed person to recover damages associated with*  
22 *a violation of this division.*

23 SEC. 9. Section 4978.6 of the Financial Code is amended to  
24 read:

25 4978.6. A person who originates ~~covered~~ *high-cost, subprime,*  
26 *or nontraditional* loans shall inform any employee, who originates  
27 ~~covered~~ *those* loans on behalf of the person, of the administrative  
28 or civil penalties for a violation of this division.

29 SEC. 10. Section 4979 of the Financial Code is amended to  
30 read:

31 4979. Upon request, a person who originates a ~~covered~~  
32 *high-cost, subprime, or nontraditional* loan shall provide the  
33 licensing agency or the consumer, at no cost, documentation  
34 regarding his or her loan that clearly demonstrates whether any  
35 loan is a ~~covered~~ *high-cost, subprime, or nontraditional* loan. This  
36 documentation shall include, but not be limited to, full disclosure  
37 of the original principal balance, the annual percentage rate, and  
38 the total points and fees, as defined in Section 4970.

39 SEC. 11. Section 4980 is added to the Financial Code, to read:

1     4980. It shall constitute a defense against foreclosure on a  
2 property secured by a high-cost, subprime, or nontraditional loan  
3 if that loan is in violation of this division.

4     SEC. 12. The provisions of this act shall apply to high-cost,  
5 subprime, and nontraditional loans originated on and after January  
6 1, 2009.

O

AMENDED IN ASSEMBLY JANUARY 18, 2008

AMENDED IN ASSEMBLY JANUARY 7, 2008

AMENDED IN ASSEMBLY APRIL 23, 2007

AMENDED IN ASSEMBLY FEBRUARY 1, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 69**

---

---

**Introduced by Assembly Member Lieu**  
*(Coauthors: Assembly Members Swanson and Wolk)*

December 4, 2006

---

---

An act to ~~amend Sections 5310 and 22715 of, and to add~~ *add and repeal* Sections 1934.5, ~~5205.7,~~ 14255.5, 22159.5, and 50307.1 ~~to,~~ *of* the Financial Code, relating to mortgage lending.

LEGISLATIVE COUNSEL'S DIGEST

AB 69, as amended, Lieu. Mortgage lending: reporting.

(1) Existing law provides for the regulation of state commercial and industrial banks, ~~savings associations,~~ and credit unions by the Commissioner of the Department of Financial Institutions. Existing law requires those banks, ~~savings associations,~~ and credit unions to submit specified reports to the commissioner. Existing law provides for specified penalties for a violation thereof.

This bill would, *until July 1, 2010*, require the entities described above, if servicing ~~or originating~~ loans secured by real property, to report to the commissioner monthly with specified information related to different types of loans serviced ~~or originated~~ by those entities, including whether the loans are past due, in foreclosure, or have been modified. The bill would require the Department of Financial Institutions

to make information on these reports available on its Internet Web site and to the Legislature, as specified. ~~The bill would make those entities that fail to submit those reports subject to the penalties described above, as applied respectively.~~

(2) Existing law provides for the regulation and licensure of finance lenders and brokers by the Commissioner of Corporations. Existing law requires a licensee to submit specified reports to the commissioner. Existing law provides for the suspension or revocation of the license of any licensee that fails to submit those reports.

Existing law provides for the regulation and licensure of residential mortgage lenders and residential mortgage loan services by the Commissioner of Corporations. Existing law requires a licensee to submit specified reports to the commissioner. Existing law provides for specified penalties against a licensee that fails to submit those reports and authorizes the commissioner to examine the books, records, and affairs of a licensee for failure to submit the reports.

This bill would, *until July 1, 2010*, require the licensees described above to report to the commissioner monthly with specified information related to different types of loans serviced ~~or originated~~ by those licensees, including whether the loans are past due, in foreclosure, or have been modified. The bill would require the Department of Corporations to make information on these reports available on its Internet Web site and to the Legislature, as specified. ~~The bill would make a licensee that fails to submit those reports subject to the penalties described above, as applied respectively.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1934.5 is added to the Financial Code,
- 2 to read:
- 3 1934.5. (a) Any bank that services ~~or originates~~ loans secured
- 4 by real property shall file a report with the commissioner monthly
- 5 that contains all of the following and any other information
- 6 *concerning loan modifications* requested by the commissioner:
- 7 (1) The total number of loans serviced.
- 8 (2) ~~Serviced loans~~ *The total number of nontraditional loans*
- 9 *serviced that were* originated and funded by an unaffiliated party.

- 1     ~~(3) Serviced loans~~—*The total number of nontraditional loans*  
2 *serviced where the originator or funding party is affiliated with*  
3 *the licensee.*
- 4     ~~(4) Serviced loans~~—*The total number of nontraditional loans*  
5 *serviced that are secured by owner-occupied residences.*
- 6     ~~(5) Serviced loans~~—*The total number of nontraditional loans*  
7 *serviced that are for investment or second residence properties.*
- 8     ~~(6) Loans serviced or originated~~—*The total number of*  
9 *nontraditional loans serviced that are secured by a first mortgage*  
10 *only.*
- 11    ~~(7) Loans serviced or originated~~—*The total number of*  
12 *nontraditional loans serviced that are secured by a second*  
13 *mortgage only.*
- 14    ~~(8) Loans serviced or originated~~—*The total number of*  
15 *nontraditional loans serviced that are secured by both a first and*  
16 *second mortgage.*
- 17    ~~(9) Prime loans serviced or originated in the following~~  
18 ~~categories:~~  
19 ~~and second mortgage.~~
- 20    ~~(9) The total number of subprime loans serviced that were~~  
21 ~~originated and funded by an unaffiliated party.~~
- 22    ~~(10) The total number of subprime loans serviced where the~~  
23 ~~originator or funding party is affiliated with the licensee.~~
- 24    ~~(11) The total number of subprime loans serviced that are~~  
25 ~~secured by owner-occupied residences.~~
- 26    ~~(12) The total number of subprime loans serviced that are for~~  
27 ~~investment or second residence properties.~~
- 28    ~~(13) The total number of subprime loans serviced that are~~  
29 ~~secured by a first mortgage only.~~
- 30    ~~(14) The total number of subprime loans serviced that are~~  
31 ~~secured by a second mortgage only.~~
- 32    ~~(15) The total number of subprime loans serviced that are~~  
33 ~~secured by both a first and second mortgage.~~
- 34    ~~(16) The total number of nontraditional loans serviced in the~~  
35 ~~following categories:~~
- 36    ~~(A) Fixed rate, fully amortizing loans.~~
- 37    ~~(B) Hybrid adjustable rate mortgages mortgage loans.~~
- 38    ~~(C) Adjustable rate, fully amortizing loans.~~
- 39    ~~(D) Loans with interest only features.~~

- 1 (E) Payment option adjustable rate mortgages and other loans
- 2 with negative amortization features.
- 3 ~~(F) Other real property loans that are not subprime loans under~~
- 4 ~~paragraph (10):~~
- 5 ~~(10) Subprime loans serviced or originated~~
- 6 *(17) The total number of subprime loans serviced in the*
- 7 *following categories:*
- 8 (A) Fixed rate, fully amortizing *loans*.
- 9 (B) Hybrid adjustable rate ~~mortgages~~ *mortgage loans*.
- 10 (C) Adjustable rate, fully amortizing *loans*.
- 11 (D) Loans with interest only features.
- 12 (E) Payment option adjustable rate mortgages and other loans
- 13 with negative amortization features.
- 14 ~~(F) Other real property loans that are not prime loans under~~
- 15 ~~paragraph (9):~~
- 16 ~~(11) The following information for prime loans, subprime loans,~~
- 17 ~~and alternative mortgage loans serviced or originated:~~
- 18 *(18) The following information for subprime loans and*
- 19 *nontraditional loans serviced:*
- 20 (A) ~~Loans~~ *The total number of loans 30 to 59 days past due.*
- 21 (B) ~~Loans~~ *The total number of loans 60 to 89 days past due.*
- 22 (C) ~~Loans~~ *The total number of loans 90 days or more past due.*
- 23 (D) ~~Loans~~ *The total number of loans described in subparagraph*
- 24 *(A), (B), or (C) that have been modified in the last 12 months.*
- 25 (E) ~~Loans~~ *The total number of loans in the process of*
- 26 *foreclosure.*
- 27 (F) ~~Loans~~ *The total number of loans where notice of default has*
- 28 *been sent.*
- 29 (G) ~~Loans~~ *The total number of loans where formal foreclosure*
- 30 *proceedings have been started.*
- 31 (H) ~~Loans~~ *The total number of loans where foreclosure*
- 32 *proceedings have been completed.*
- 33 (I) ~~Loans~~ *The total number of loans that entered delinquency*
- 34 *within three six payments of an interest rate increase.*
- 35 (J) *The percentage of loans described in subparagraphs (A) to*
- 36 *(I), inclusive, that are securitized.*
- 37 ~~(12)~~
- 38 (19) *The following loss mitigation efforts that are in process or*
- 39 *are closed relative to mortgage loans serviced or originated:*
- 40 (A) Deeds in lieu.

- 1 (B) Short sales.
- 2 (C) Forbearances.
- 3 (D) Repayment plans.
- 4 (E) Refinances or paid in full.
- 5 (F) Reinstatement by an account becoming current.
- 6 (G) Modification by principal reduction or by interest rate or
- 7 term of debt modification.
- 8 ~~(13) Whether a prepayment penalty was waived for any loss~~
- 9 ~~mitigation action under paragraph (12).~~
- 10 (H) *The percentage of loans described in subparagraphs (A)*
- 11 *to (G), inclusive, that are securitized.*
- 12 (20) *The number of prepayment penalties waived in connection*
- 13 *with each of the loss mitigation actions under paragraph (19).*
- 14 (21) *The number of prepayment penalties assessed in connection*
- 15 *with each of the loss mitigation actions under paragraph (19).*
- 16 ~~(14)~~
- 17 (22) Information on closed loan modifications under paragraph
- 18 ~~(12)~~ (19), including the following:
- 19 (A) The duration of the modification relative to the life of the
- 20 loan.
- 21 (B) The types of modifications closed.
- 22 (C) Modifications by freezing the interest rate at the initial or
- 23 start rate.
- 24 (D) Modifications by reducing the interest rate below the initial
- 25 or start rate.
- 26 (E) Modifications by reducing the interest rate below the
- 27 scheduled adjustable rate increase (reset) but above the initial or
- 28 start rate.
- 29 (F) Modifications with extension of the term of the loan.
- 30 (G) Modifications with reduction in principal balance.
- 31 (H) Modifications using a combination of the methods described
- 32 in this paragraph.
- 33 (I) Any other types of modifications.
- 34 (J) *The percentage of loans described in subparagraphs (A) to*
- 35 *(I), inclusive, that are securitized.*
- 36 (b) ~~A summation of all~~ The reports made to the commissioner
- 37 pursuant to subdivision (a) shall be posted on the department's
- 38 ~~Internet Web site and the full data shall be made available to the~~
- 39 ~~Legislature upon request.~~

1 ~~(e) A bank that fails to report under subdivision (a) shall be~~  
 2 ~~subject to Section 1938.~~

3 *Internet Web site on a servicer-specific basis.*

4 *(c) Nothing in this section shall prevent the commissioner from*  
 5 *accepting data voluntarily submitted from a federally supervised*  
 6 *financial institution.*

7 *(d) The data collected under this section shall be for loans*  
 8 *secured by residential real property.*

9 *(e) For purposes of this section the following definitions shall*  
 10 *apply:*

11 *(1) “Subprime loan” means a loan where the difference between*  
 12 *the annual percentage rate for the loan and the yield on Treasury*  
 13 *securities having comparable periods of maturity is either equal*  
 14 *to or greater than (A) 3 percentage points if the loan is secured*  
 15 *by a first lien mortgage or deed of trust, or (B) 5 percentage points*  
 16 *if the loan is secured by a subordinate lien mortgage or deed of*  
 17 *trust.*

18 *(2) “Nontraditional loan” or “nontraditional mortgage” means*  
 19 *any mortgage product that allows the borrower to defer payment*  
 20 *of principal and, sometimes, interest, as set forth in the*  
 21 *“Interagency Guidance on Nontraditional Mortgage Product*  
 22 *Risks” (71 Fed. Reg. 58609 (Oct. 4, 2006)).*

23 *(f) This section shall become inoperative on July 1, 2010, and,*  
 24 *as of January 1, 2011, is repealed, unless a later enacted statute,*  
 25 *that becomes operative on or before January 1, 2011, deletes or*  
 26 *extends the dates on which it becomes inoperative and is repealed.*

27 ~~SEC. 2. Section 5205.7 is added to the Financial Code, to read:~~

28 ~~5205.7. (a) Any savings association that services or originates~~  
 29 ~~loans secured by real property shall file a report with the~~  
 30 ~~commissioner monthly that contains all of the following and any~~  
 31 ~~other information requested by the commissioner:~~

32 ~~(1) The total number of loans serviced.~~

33 ~~(2) Serviced loans originated and funded by an unaffiliated~~  
 34 ~~party.~~

35 ~~(3) Serviced loans where the originator or funding party is~~  
 36 ~~affiliated with the licensee.~~

37 ~~(4) Serviced loans secured by owner-occupied residences.~~

38 ~~(5) Serviced loans for investment or second residence properties.~~

39 ~~(6) Loans serviced or originated that are secured by a first~~  
 40 ~~mortgage only.~~

- 1 ~~(7) Loans serviced or originated that are secured by a second~~
- 2 ~~mortgage only.~~
- 3 ~~(8) Loans serviced or originated that are secured by both a first~~
- 4 ~~and second mortgage.~~
- 5 ~~(9) Prime loans serviced or originated in the following~~
- 6 ~~categories:~~
- 7 ~~(A) Fixed rate, fully amortizing.~~
- 8 ~~(B) Hybrid adjustable rate mortgages.~~
- 9 ~~(C) Adjustable rate, fully amortizing.~~
- 10 ~~(D) Loans with interest only features.~~
- 11 ~~(E) Payment option adjustable rate mortgages and other loans~~
- 12 ~~with negative amortization features.~~
- 13 ~~(F) Other real property loans that are not subprime loans under~~
- 14 ~~paragraph (10).~~
- 15 ~~(10) Subprime loans serviced or originated in the following~~
- 16 ~~categories:~~
- 17 ~~(A) Fixed rate, fully amortizing.~~
- 18 ~~(B) Hybrid adjustable rate mortgages.~~
- 19 ~~(C) Adjustable rate, fully amortizing.~~
- 20 ~~(D) Loans with interest only features.~~
- 21 ~~(E) Payment option adjustable rate mortgages and other loans~~
- 22 ~~with negative amortization features.~~
- 23 ~~(F) Other real property loans that are not prime loans under~~
- 24 ~~paragraph (9).~~
- 25 ~~(11) The following information for prime loans, subprime loans,~~
- 26 ~~and alternative mortgage loans serviced or originated:~~
- 27 ~~(A) Loans 30 to 59 days past due.~~
- 28 ~~(B) Loans 60 to 89 days past due.~~
- 29 ~~(C) Loans 90 days or more past due.~~
- 30 ~~(D) Loans described in subparagraph (A), (B), or (C) that have~~
- 31 ~~been modified in the last 12 months.~~
- 32 ~~(E) Loans in the process of foreclosure.~~
- 33 ~~(F) Loans where notice of default has been sent.~~
- 34 ~~(G) Loans where formal foreclosure proceedings have been~~
- 35 ~~started.~~
- 36 ~~(H) Loans where foreclosure proceedings have been completed.~~
- 37 ~~(I) Loans that entered delinquency within three payments of an~~
- 38 ~~interest rate increase.~~
- 39 ~~(12) The following loss mitigation efforts that are in process or~~
- 40 ~~are closed relative to mortgage loans serviced or originated:~~

- 1 ~~(A) Deeds in lieu.~~
- 2 ~~(B) Short sales.~~
- 3 ~~(C) Forbearances.~~
- 4 ~~(D) Repayment plans.~~
- 5 ~~(E) Refinances or paid in full.~~
- 6 ~~(F) Reinstatement by an account becoming current.~~
- 7 ~~(G) Modification by principal reduction or by interest rate or~~
- 8 ~~term of debt modification.~~
- 9 ~~(13) Whether a prepayment penalty was waived for any loss~~
- 10 ~~mitigation action under paragraph (12).~~
- 11 ~~(14) Information on closed loan modifications under paragraph~~
- 12 ~~(12), including the following:~~
- 13 ~~(A) The duration of the modification relative to the life of the~~
- 14 ~~loan.~~
- 15 ~~(B) The types of modifications closed.~~
- 16 ~~(C) Modifications by freezing the interest rate at the initial or~~
- 17 ~~start rate.~~
- 18 ~~(D) Modifications by reducing the interest rate below the initial~~
- 19 ~~or start rate.~~
- 20 ~~(E) Modifications by reducing the interest rate below the~~
- 21 ~~scheduled adjustable rate increase (reset) but above the initial or~~
- 22 ~~start rate.~~
- 23 ~~(F) Modifications with extension of the term of the loan.~~
- 24 ~~(G) Modifications with reduction in principal balance.~~
- 25 ~~(H) Modifications using a combination of the methods described~~
- 26 ~~in this paragraph.~~
- 27 ~~(I) Any other types of modifications.~~
- 28 ~~(b) A summation of all reports made to the commissioner~~
- 29 ~~pursuant to subdivision (a) shall be posted on the department's~~
- 30 ~~Internet Web site and the full data shall be made available to the~~
- 31 ~~Legislature upon request.~~
- 32 ~~(c) A savings association that fails to report under subdivision~~
- 33 ~~(a) shall be subject to Section 5310.~~
- 34 ~~SEC. 3. Section 5310 of the Financial Code is amended to read:~~
- 35 ~~5310. (a) Any person violating or conspiring to violate Sections~~
- 36 ~~5205.7, 5303, 5304, 5305, or 5306 shall be subject to a civil penalty~~
- 37 ~~in an amount assessed by the court in a civil action under this~~
- 38 ~~section.~~

1 ~~(b) The maximum amount of the penalty which may be imposed~~  
2 ~~under this section shall be determined in accordance with the~~  
3 ~~following:~~

4 ~~(1) Except as provided by paragraphs (2) and (3), the civil~~  
5 ~~penalty shall not exceed one million dollars (\$1,000,000).~~

6 ~~(2) In the case of a continuing violation, the amount of the civil~~  
7 ~~penalty may exceed the amount described in paragraph (1), but~~  
8 ~~may not exceed the lesser of one million dollars (\$1,000,000) for~~  
9 ~~each day the violation continues or five million dollars~~  
10 ~~(\$5,000,000).~~

11 ~~(3) If any person derives pecuniary gain from the violation, or~~  
12 ~~if the violation results in pecuniary loss to a person other than the~~  
13 ~~violation, the amount of the civil penalty may exceed the amounts~~  
14 ~~described in paragraphs (1) and (2) but may not exceed the amount~~  
15 ~~of that gain or loss.~~

16 ~~(e) A civil action to recover a civil penalty under this section~~  
17 ~~shall be brought in the name of the people of the State of California~~  
18 ~~by the Attorney General, who shall be required to establish the~~  
19 ~~right to recovery by a preponderance of the evidence.~~

20 ~~(d) For the purpose of conducting a civil investigation in~~  
21 ~~contemplation of proceeding under this section, the Attorney~~  
22 ~~General may do all of the following:~~

23 ~~(1) Administer oaths and affirmations.~~

24 ~~(2) Take evidence.~~

25 ~~(3) By subpoena or subpoena duces tecum, summon witnesses~~  
26 ~~and require the production of any books, papers, correspondence,~~  
27 ~~memoranda, or other records which the Attorney General deems~~  
28 ~~relevant or material to the inquiry.~~

29 ~~SEC. 4.~~

30 ~~SEC. 2. Section 14255.5 is added to the Financial Code, to~~  
31 ~~read:~~

32 ~~14255.5. (a) Any credit union that services or originates loans~~  
33 ~~secured by real property shall file a report with the commissioner~~  
34 ~~monthly that contains all of the following and any other information~~  
35 ~~concerning loan modifications requested by the commissioner:~~

36 ~~(1) The total number of loans serviced.~~

37 ~~(2) Serviced loans—The total number of nontraditional loans~~  
38 ~~serviced that were originated and funded by an unaffiliated party.~~

- 1     (3) ~~Serviced loans~~—*The total number of nontraditional loans*  
 2 *serviced where the originator or funding party is affiliated with*  
 3 *the licensee.*
- 4     (4) ~~Serviced loans~~—*The total number of nontraditional loans*  
 5 *serviced that are secured by owner-occupied residences.*
- 6     (5) ~~Serviced loans~~—*The total number of nontraditional loans*  
 7 *serviced that are for investment or second residence properties.*
- 8     (6) ~~Loans serviced or originated~~—*The total number of*  
 9 *nontraditional loans serviced that are secured by a first mortgage*  
 10 *only.*
- 11    (7) ~~Loans serviced or originated~~—*The total number of*  
 12 *nontraditional loans serviced that are secured by a second*  
 13 *mortgage only.*
- 14    (8) ~~Loans serviced or originated~~—*The total number of*  
 15 *nontraditional loans serviced that are secured by both a first and*  
 16 *second mortgage.*
- 17    (9) ~~Prime loans serviced or originated in the following~~  
 18 ~~categories:~~
- 19    (9) *The total number of subprime loans serviced that were*  
 20 *originated and funded by an unaffiliated party.*
- 21    (10) *The total number of subprime loans serviced where the*  
 22 *originator or funding party is affiliated with the licensee.*
- 23    (11) *The total number of subprime loans serviced that are*  
 24 *secured by owner-occupied residences.*
- 25    (12) *The total number of subprime loans serviced that are for*  
 26 *investment or second residence properties.*
- 27    (13) *The total number of subprime loans serviced that are*  
 28 *secured by a first mortgage only.*
- 29    (14) *The total number of subprime loans serviced that are*  
 30 *secured by a second mortgage only.*
- 31    (15) *The total number of subprime loans serviced that are*  
 32 *secured by both a first and second mortgage.*
- 33    (16) *The total number of nontraditional loans serviced in the*  
 34 *following categories:*
- 35    (A) *Fixed rate, fully amortizing loans.*
- 36    (B) *Hybrid adjustable rate ~~mortgages~~ mortgage loans.*
- 37    (C) *Adjustable rate, fully amortizing loans.*
- 38    (D) *Loans with interest only features.*
- 39    (E) *Payment option adjustable rate mortgages and other loans*  
 40 *with negative amortization features.*

1 ~~(F) Other real property loans that are not subprime loans under~~  
2 ~~paragraph (10):~~

3 ~~(10) Subprime loans serviced or originated in the following~~  
4 ~~categories:~~

5 ~~(17) The total number of subprime loans serviced in the~~  
6 ~~following categories:~~

- 7 (A) Fixed rate, fully amortizing loans.
- 8 (B) Hybrid adjustable rate ~~mortgages~~ mortgage loans.
- 9 (C) Adjustable rate, fully amortizing loans.
- 10 (D) Loans with interest only features.
- 11 (E) Payment option adjustable rate mortgages and other loans
- 12 with negative amortization features.

13 ~~(F) Other real property loans that are not prime loans under~~  
14 ~~paragraph (9):~~

15 ~~(11) The following information for prime loans, subprime loans,~~  
16 ~~and alternative mortgage loans serviced or originated:~~

17 ~~(18) The following information for subprime loans and~~  
18 ~~nontraditional loans serviced:~~

- 19 ~~(A) Loans~~The total number of loans 30 to 59 days past due.
- 20 ~~(B) Loans~~The total number of loans 60 to 89 days past due.
- 21 ~~(C) Loans~~The total number of loans 90 days or more past due.
- 22 ~~(D) Loans~~The total number of loans described in subparagraph
- 23 (A), (B), or (C) that have been modified in the last 12 months.
- 24 ~~(E) Loans~~The total number of loans in the process of
- 25 foreclosure.
- 26 ~~(F) Loans~~The total number of loans where notice of default has
- 27 been sent.
- 28 ~~(G) Loans~~The total number of loans where formal foreclosure
- 29 proceedings have been started.
- 30 ~~(H) Loans~~The total number of loans where foreclosure
- 31 proceedings have been completed.
- 32 ~~(I) Loans~~The total number of loans that entered delinquency
- 33 within ~~three~~ six payments of an interest rate increase.
- 34 ~~(J) The percentage of loans described in subparagraphs (A) to~~
- 35 ~~(I), inclusive, that are securitized.~~

36 ~~(12)~~

37 ~~(19) The following loss mitigation efforts that are in process or~~  
38 ~~are closed relative to mortgage loans serviced or originated:~~

- 39 (A) Deeds in lieu.
- 40 (B) Short sales.

- 1 (C) Forbearances.  
2 (D) Repayment plans.  
3 (E) Refinances or paid in full.  
4 (F) Reinstatement by an account becoming current.  
5 (G) Modification by principal reduction or by interest rate or  
6 term of debt modification.  
7 ~~(13) Whether a prepayment penalty was waived for any loss~~  
8 ~~mitigation action under paragraph (12):~~  
9 (H) *The percentage of loans described in subparagraphs (A) to*  
10 *(G), inclusive, that are securitized.*  
11 (20) *The number of prepayment penalties waived in connection*  
12 *with each of the loss mitigation actions under paragraph (19).*  
13 (21) *The number of prepayment penalties assessed in connection*  
14 *with each of the loss mitigation actions under paragraph (19).*  
15 ~~(14)~~  
16 (22) Information on closed loan modifications under paragraph  
17 ~~(12)~~ (19), including the following:  
18 (A) The duration of the modification relative to the life of the  
19 loan.  
20 (B) The types of modifications closed.  
21 (C) Modifications by freezing the interest rate at the initial or  
22 start rate.  
23 (D) Modifications by reducing the interest rate below the initial  
24 or start rate.  
25 (E) Modifications by reducing the interest rate below the  
26 scheduled adjustable rate increase (reset) but above the initial or  
27 start rate.  
28 (F) Modifications with extension of the term of the loan.  
29 (G) Modifications with reduction in principal balance.  
30 (H) Modifications using a combination of the methods described  
31 in this paragraph.  
32 (I) Any other types of modifications.  
33 (J) *The percentage of loans described in subparagraphs (A) to*  
34 *(I), inclusive, that are securitized.*  
35 ~~(b) A summation of all~~ The reports made to the commissioner  
36 pursuant to subdivision (a) shall be posted on the department's  
37 Internet Web site and the full data shall be made available to the  
38 Legislature upon request.  
39 ~~(e) A credit union that fails to report under subdivision (a) shall~~  
40 ~~be subject to Section 14256.~~

1 *Internet Web site on a Servicer-specific basis.*

2 (c) *Nothing in this section shall prevent the commissioner from*  
3 *accepting data voluntarily submitted from a federally supervised*  
4 *financial institution.*

5 (d) *The data collected under this section shall be for loans*  
6 *secured by residential real property.*

7 (e) *For purposes of this section the following definitions shall*  
8 *apply:*

9 (1) *“Subprime loan” means a loan where the difference between*  
10 *the annual percentage rate for the loan and the yield on Treasury*  
11 *securities having comparable periods of maturity is either equal*  
12 *to or greater than (A) 3 percentage points if the loan is secured*  
13 *by a first lien mortgage or deed of trust, or (B) 5 percentage points*  
14 *if the loan is secured by a subordinate lien mortgage or deed of*  
15 *trust.*

16 (2) *“Nontraditional loan” or “nontraditional mortgage” means*  
17 *any mortgage product that allows the borrower to defer payment*  
18 *of principal and, sometimes, interest, as set forth in the*  
19 *“Interagency Guidance on Nontraditional Mortgage Product*  
20 *Risks” (71 Fed. Reg. 58609 (Oct. 4, 2006)).*

21 (f) *This section shall become inoperative on July 1, 2010, and,*  
22 *as of January 1, 2011, is repealed, unless a later enacted statute,*  
23 *that becomes operative on or before January 1, 2011, deletes or*  
24 *extends the dates on which it becomes inoperative and is repealed.*

25 ~~SEC. 5.~~

26 *SEC. 3.* Section 22159.5 is added to the Financial Code, to  
27 read:

28 22159.5. (a) Each licensee shall file a report with the  
29 commissioner monthly that contains all of the following and any  
30 other information *concerning loan modifications* requested by the  
31 commissioner:

32 (1) The total number of loans serviced.

33 (2) ~~Serviced loans~~ *The total number of nontraditional loans*  
34 *serviced that were originated and funded by an unaffiliated party.*

35 (3) ~~Serviced loans~~ *The total number of nontraditional loans*  
36 *serviced where the originator or funding party is affiliated with*  
37 *the licensee.*

38 (4) ~~Serviced loans~~ *The total number of nontraditional loans*  
39 *serviced that are secured by owner-occupied residences.*

- 1     ~~(5) Serviced loans~~—*The total number of nontraditional loans*  
2 *serviced that are for investment or second residence properties.*
- 3     ~~(6) Loans serviced or originated~~—*The total number of*  
4 *nontraditional loans serviced that are secured by a first mortgage*  
5 *only.*
- 6     ~~(7) Loans serviced or originated~~—*The total number of*  
7 *nontraditional loans serviced that are secured by a second*  
8 *mortgage only.*
- 9     ~~(8) Loans serviced or originated~~—*The total number of*  
10 *nontraditional loans serviced that are secured by both a first and*  
11 *second mortgage.*
- 12     ~~(9) Prime loans serviced or originated in the following~~  
13 ~~categories:~~
- 14     ~~(9)~~ *The total number of subprime loans serviced that were*  
15 *originated and funded by an unaffiliated party.*
- 16     ~~(10)~~ *The total number of subprime loans serviced where the*  
17 *originator or funding party is affiliated with the licensee.*
- 18     ~~(11)~~ *The total number of subprime loans serviced that are*  
19 *secured by owner-occupied residences.*
- 20     ~~(12)~~ *The total number of subprime loans serviced that are for*  
21 *investment or second residence properties.*
- 22     ~~(13)~~ *The total number of subprime loans serviced that are*  
23 *secured by a first mortgage only.*
- 24     ~~(14)~~ *The total number of subprime loans serviced that are*  
25 *secured by a second mortgage only.*
- 26     ~~(15)~~ *The total number of subprime loans serviced that are*  
27 *secured by both a first and second mortgage.*
- 28     ~~(16)~~ *The total number of nontraditional loans serviced in the*  
29 *following categories:*
- 30     ~~(A)~~ *Fixed rate, fully amortizing loans.*
- 31     ~~(B)~~ *Hybrid adjustable rate mortgages mortgage loans.*
- 32     ~~(C)~~ *Adjustable rate, fully amortizing loans.*
- 33     ~~(D)~~ *Loans with interest only features.*
- 34     ~~(E)~~ *Payment option adjustable rate mortgages and other loans*  
35 *with negative amortization features.*
- 36     ~~(F) Other real property loans that are not subprime loans under~~  
37 ~~paragraph (10).~~
- 38     ~~(10)~~ *Subprime loans serviced or originated in the following*  
39 *categories:*

1 (17) *The total number of subprime loans serviced in the*  
2 *following categories:*

- 3 (A) Fixed rate, fully amortizing *loans*.
- 4 (B) Hybrid adjustable rate ~~mortgages~~ *mortgage loans*.
- 5 (C) Adjustable rate, fully amortizing *loans*.
- 6 (D) Loans with interest only features.
- 7 (E) Payment option adjustable rate mortgages and other loans
- 8 with negative amortization features.
- 9 ~~(F) Other real property loans that are not prime loans under~~
- 10 ~~paragraph (9).~~

11 ~~(11) The following information for prime loans, subprime loans,~~  
12 ~~and alternative mortgage loans serviced or originated:~~

13 (18) *The following information for subprime loans and*  
14 *nontraditional loans serviced:*

- 15 ~~(A) Loans~~ *The total number of loans 30 to 59 days past due.*
- 16 ~~(B) Loans~~ *The total number of loans 60 to 89 days past due.*
- 17 ~~(C) Loans~~ *The total number of loans 90 days or more past due.*
- 18 ~~(D) Loans~~ *The total number of loans described in subparagraph*  
19 *(A), (B), or (C) that have been modified in the last 12 months.*
- 20 ~~(E) Loans~~ *The total number of loans in the process of*  
21 *foreclosure.*
- 22 ~~(F) Loans~~ *The total number of loans where notice of default has*  
23 *been sent.*
- 24 ~~(G) Loans~~ *The total number of loans where formal foreclosure*  
25 *proceedings have been started.*
- 26 ~~(H) Loans~~ *The total number of loans where foreclosure*  
27 *proceedings have been completed.*
- 28 ~~(I) Loans~~ *The total number of loans that entered delinquency*  
29 *within three six payments of an interest rate increase.*
- 30 ~~(J) The percentage of loans described in subparagraphs (A) to~~  
31 ~~(I), inclusive, that are securitized.~~

32 ~~(12)~~

33 (19) *The following loss mitigation efforts that are in process or*  
34 *are closed relative to mortgage loans serviced or originated:*

- 35 (A) Deeds in lieu.
- 36 (B) Short sales.
- 37 (C) Forbearances.
- 38 (D) Repayment plans.
- 39 (E) Refinances or paid in full.
- 40 (F) Reinstatement by an account becoming current.

- 1 (G) Modification by principal reduction or by interest rate or
- 2 term of debt modification.
- 3 ~~(13) Whether a prepayment penalty was waived for any loss~~
- 4 ~~mitigation action under paragraph (12).~~
- 5 (H) *The percentage of loans described in subparagraphs (A) to*
- 6 *(G), inclusive, that are securitized.*
- 7 (20) *The number of prepayment penalties waived in connection*
- 8 *with each of the loss mitigation actions under paragraph (19).*
- 9 (21) *The number of prepayment penalties assessed in connection*
- 10 *with each of the loss mitigation actions under paragraph (19).*
- 11 ~~(14)~~
- 12 (22) Information on closed loan modifications under paragraph
- 13 ~~(12)~~ (19), including the following:
- 14 (A) The duration of the modification relative to the life of the
- 15 loan.
- 16 (B) The types of modifications closed.
- 17 (C) Modifications by freezing the interest rate at the initial or
- 18 start rate.
- 19 (D) Modifications by reducing the interest rate below the initial
- 20 or start rate.
- 21 (E) Modifications by reducing the interest rate below the
- 22 scheduled adjustable rate increase (reset) but above the initial or
- 23 start rate.
- 24 (F) Modifications with extension of the term of the loan.
- 25 (G) Modifications with reduction in principal balance.
- 26 (H) Modifications using a combination of the methods described
- 27 in this paragraph.
- 28 (I) Any other types of modifications.
- 29 (J) *The percentage of loans described in subparagraphs (A) to*
- 30 *(I), inclusive, that are securitized.*
- 31 ~~(b) A summation of all~~ The reports made to the commissioner
- 32 pursuant to subdivision (a) shall be posted on the department's
- 33 Internet Web site and the full data shall be made available to the
- 34 Legislature upon request.
- 35 ~~(e) A licensee that fails to file a report under subdivision (a)~~
- 36 ~~shall be subject to Section 22715.~~
- 37 *Internet Web site servicer-specific basis.*
- 38 (c) *Nothing in this section shall prevent the commissioner from*
- 39 *accepting data voluntarily submitted from a federally supervised*
- 40 *financial institution.*

1 (d) *The data collected under this section shall be for loans*  
2 *secured by residential real property.*

3 (e) *For purposes of this section the following definitions shall*  
4 *apply:*

5 (1) *“Subprime loan” means a loan where the difference between*  
6 *the annual percentage rate for the loan and the yield on Treasury*  
7 *securities having comparable periods of maturity is either equal*  
8 *to or greater than (A) 3 percentage points if the loan is secured*  
9 *by a first lien mortgage or deed of trust, or (B) 5 percentage points*  
10 *if the loan is secured by a subordinate lien mortgage or deed of*  
11 *trust.*

12 (2) *“Nontraditional loan” or “nontraditional mortgage” means*  
13 *any mortgage product that allows the borrower to defer payment*  
14 *of principal and, sometimes, interest, as set forth in the*  
15 *“Interagency Guidance on Nontraditional Mortgage Product*  
16 *Risks” (71 Fed. Reg. 58609 (Oct. 4, 2006)).*

17 (f) *This section shall become inoperative on July 1, 2010, and,*  
18 *as of January 1, 2011, is repealed, unless a later enacted statute,*  
19 *that becomes operative on or before January 1, 2011, deletes or*  
20 *extends the dates on which it becomes inoperative and is repealed.*

21 ~~SEC. 6. Section 22715 of the Financial Code is amended to~~  
22 ~~read:~~

23 ~~22715. The commissioner may by order summarily suspend~~  
24 ~~or revoke the license of any licensee if that person fails to file the~~  
25 ~~report required by Section 22159 or 22159.5 within 10 days after~~  
26 ~~notice by the commissioner that the report is due and not filed. If,~~  
27 ~~after an order is made, a request for hearing is filed in writing~~  
28 ~~within 30 days and the hearing is not held within 60 days thereafter,~~  
29 ~~the order is deemed rescinded as of its effective date.~~

30 ~~SEC. 7.~~

31 *SEC. 4. Section 50307.1 is added to the Financial Code, to*  
32 *read:*

33 50307.1. (a) Each licensee shall file a report with the  
34 commissioner monthly that contains all of the following and any  
35 other information *concerning loan modifications* requested by the  
36 commissioner:

37 (1) The total number of loans serviced.

38 (2) ~~Serviced loans~~ *The total number of nontraditional loans*  
39 *serviced that were originated and funded by an unaffiliated party.*

- 1     ~~(3) Serviced loans—~~*The total number of nontraditional loans*  
2 *serviced where the originator or funding party is affiliated with*  
3 *the licensee.*
- 4     ~~(4) Serviced loans—~~*The total number of nontraditional loans*  
5 *serviced that are secured by owner-occupied residences.*
- 6     ~~(5) Serviced loans—~~*The total number of nontraditional loans*  
7 *serviced that are for investment or second residence properties.*
- 8     ~~(6) Loans serviced or originated—~~*The total number of*  
9 *nontraditional loans serviced that are secured by a first mortgage*  
10 *only.*
- 11    ~~(7) Loans serviced or originated—~~*The total number of*  
12 *nontraditional loans serviced that are secured by a second*  
13 *mortgage only.*
- 14    ~~(8) Loans serviced or originated—~~*The total number of*  
15 *nontraditional loans serviced that are secured by both a first and*  
16 *second mortgage.*
- 17    ~~(9) Prime loans serviced or originated in the following~~  
18 ~~categories:~~
- 19    ~~(9) The total number of subprime loans serviced that were~~  
20 ~~originated and funded by an unaffiliated party.~~
- 21    ~~(10) The total number of subprime loans serviced where the~~  
22 ~~originator or funding party is affiliated with the licensee.~~
- 23    ~~(11) The total number of subprime loans serviced that are~~  
24 ~~secured by owner-occupied residences.~~
- 25    ~~(12) The total number of subprime loans serviced that are for~~  
26 ~~investment or second residence properties.~~
- 27    ~~(13) The total number of subprime loans serviced that are~~  
28 ~~secured by a first mortgage only.~~
- 29    ~~(14) The total number of subprime loans serviced that are~~  
30 ~~secured by a second mortgage only.~~
- 31    ~~(15) The total number of subprime loans serviced that are~~  
32 ~~secured by both a first and second mortgage.~~
- 33    ~~(16) The total number of nontraditional loans serviced in the~~  
34 ~~following categories:~~
- 35    ~~(A) Fixed rate, fully amortizing loans.~~
- 36    ~~(B) Hybrid adjustable rate mortgages mortgage loans.~~
- 37    ~~(C) Adjustable rate, fully amortizing loans.~~
- 38    ~~(D) Loans with interest only features.~~
- 39    ~~(E) Payment option adjustable rate mortgages and other loans~~  
40 ~~with negative amortization features.~~

- 1 ~~(F) Other real property loans that are not subprime loans under~~  
2 ~~paragraph (10):~~
- 3 ~~(10) Subprime loans serviced or originated in the following~~  
4 ~~categories:~~
- 5 ~~(17) The total number of subprime loans serviced in the~~  
6 ~~following categories:~~
- 7 (A) Fixed rate, fully amortizing loans.
- 8 (B) Hybrid adjustable rate ~~mortgages~~ mortgage loans.
- 9 (C) Adjustable rate, fully amortizing loans.
- 10 (D) Loans with interest only features.
- 11 (E) Payment option adjustable rate mortgages and other loans  
12 with negative amortization features.
- 13 ~~(F) Other real property loans that are not prime loans under~~  
14 ~~paragraph (9):~~
- 15 ~~(11) The following information for prime loans, subprime loans,~~  
16 ~~and alternative mortgage loans serviced or originated:~~
- 17 ~~(18) The following information for subprime loans and~~  
18 ~~nontraditional loans serviced:~~
- 19 ~~(A) Loans~~The total number of loans 30 to 59 days past due.
- 20 ~~(B) Loans~~The total number of loans 60 to 89 days past due.
- 21 ~~(C) Loans~~The total number of loans 90 days or more past due.
- 22 ~~(D) Loans~~The total number of loans described in subparagraph  
23 (A), (B), or (C) that have been modified in the last 12 months.
- 24 ~~(E) Loans~~The total number of loans in the process of  
25 foreclosure.
- 26 ~~(F) Loans~~The total number of loans where notice of default has  
27 been sent.
- 28 ~~(G) Loans~~The total number of loans where formal foreclosure  
29 proceedings have been started.
- 30 ~~(H) Loans~~The total number of loans where foreclosure  
31 proceedings have been completed.
- 32 ~~(I) Loans~~The total number of loans that entered delinquency  
33 within ~~three~~ six payments of an interest rate increase.
- 34 ~~(J) The percentage of loans described in subparagraphs (A) to~~  
35 ~~(I), inclusive, that are securitized.~~
- 36 ~~(12)~~
- 37 ~~(19) The following loss mitigation efforts that are in process or~~  
38 ~~are closed relative to mortgage loans serviced or originated:~~
- 39 (A) Deeds in lieu.
- 40 (B) Short sales.

- 1 (C) Forbearances.  
2 (D) Repayment plans.  
3 (E) Refinances or paid in full.  
4 (F) Reinstatement by an account becoming current.  
5 (G) Modification by principal reduction or by interest rate or  
6 term of debt modification.  
7 ~~(13) Whether a prepayment penalty was waived for any loss~~  
8 ~~mitigation action under paragraph (12):~~  
9 (H) *The percentage of loans described in subparagraphs (A) to*  
10 *(G), inclusive, that are securitized.*  
11 (20) *The number of prepayment penalties waived in connection*  
12 *with each of the loss mitigation actions under paragraph (19).*  
13 (21) *The number of prepayment penalties assessed in connection*  
14 *with each of the loss mitigation actions under paragraph (19).*  
15 ~~(14)~~  
16 (22) Information on closed loan modifications under paragraph  
17 ~~(12)~~ (19), including the following:  
18 (A) The duration of the modification relative to the life of the  
19 loan.  
20 (B) The types of modifications closed.  
21 (C) Modifications by freezing the interest rate at the initial or  
22 start rate.  
23 (D) Modifications by reducing the interest rate below the initial  
24 or start rate.  
25 (E) Modifications by reducing the interest rate below the  
26 scheduled adjustable rate increase (reset) but above the initial or  
27 start rate.  
28 (F) Modifications with extension of the term of the loan.  
29 (G) Modifications with reduction in principal balance.  
30 (H) Modifications using a combination of the methods described  
31 in this paragraph.  
32 (I) Any other types of modifications.  
33 (J) *The percentage of loans described in subparagraphs (A) to*  
34 *(I), inclusive, that are securitized.*  
35 ~~(b) A summation of all~~ The reports made to the commissioner  
36 pursuant to subdivision (a) shall be posted on the department's  
37 Internet Web site and the full data shall be made available to the  
38 Legislature upon request.

1 ~~(e) A licensee that fails to file a report under subdivision (a)~~  
2 ~~shall be subject to subdivision (c) of Section 50307 and Section~~  
3 ~~50326.~~

4 *Internet Web site on a servicer-specific basis.*

5 *(c) Nothing in this section shall prevent the commissioner from*  
6 *accepting data voluntarily submitted from a federally supervised*  
7 *financial institution.*

8 *(d) The data collected under this section shall be for loans*  
9 *secured by residential real property.*

10 *(e) For purposes of this section the following definitions shall*  
11 *apply:*

12 *(1) “Subprime loan” means a loan where the difference between*  
13 *the annual percentage rate for the loan and the yield on Treasury*  
14 *securities having comparable periods of maturity is either equal*  
15 *to or greater than (A) 3 percentage points if the loan is secured*  
16 *by a first lien mortgage or deed of trust, or (B) 5 percentage points*  
17 *if the loan is secured by a subordinate lien mortgage or deed of*  
18 *trust.*

19 *(2) “Nontraditional loan” or “nontraditional mortgage” means*  
20 *any mortgage product that allows the borrower to defer payment*  
21 *of principal and, sometimes, interest, as set forth in the*  
22 *“Interagency Guidance on Nontraditional Mortgage Product*  
23 *Risks” (71 Fed. Reg. 58609 (Oct. 4, 2006)).*

24 *(f) This section shall become inoperative on July 1, 2010, and,*  
25 *as of January 1, 2011, is repealed, unless a later enacted statute,*  
26 *that becomes operative on or before January 1, 2011, deletes or*  
27 *extends the dates on which it becomes inoperative and is repealed.*

28

29

30 **CORRECTIONS:**

31 **Text—Page 3.**

32

**Introduced by Senators Machado and Correa**

January 7, 2008

---

An act to add Section 17144.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1055, as introduced, Machado. Taxation: cancellation of indebtedness: mortgage debt forgiveness.

The Personal Income Tax Law, in modified conformity to federal income tax laws, requires a borrower to include in his or her income, with certain exceptions, the amount of debt canceled or discharged, as specified.

This bill would provide further conformity to federal income tax laws by conforming to specified provisions of the federal Mortgage Debt Relief Act of 2007, relating to the exclusion of the discharge of qualified principal residence indebtedness, as defined, from a taxpayer's income if that debt is discharged after January 1, 2007, and before January 1, 2009.

This bill would take effect immediately as a tax levy.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 17144.5 is added to the Revenue and
- 2 Taxation Code, to read:
- 3 17144.5. (a) Section 108 of the Internal Revenue Code shall
- 4 apply except as otherwise provided.

1 (b) Section 108 of the Internal Revenue Code, relating to income  
2 from discharge of indebtedness, as amended by Section 2 of the  
3 Mortgage Debt Relief Act of 2007 (Public Law 110-142), shall  
4 apply, except as otherwise provided.

5 (c) Section 108(a)(1)(E) of the Internal Revenue Code, as added  
6 by Section 2 of the Mortgage Debt Relief Act of 2007 (Public Law  
7 110-142), is modified by substituting the phrase “January 1, 2009”  
8 for “January 1, 2010” contained therein.

9 (d) This section shall apply to discharges of indebtedness  
10 occurring on or after January 1, 2007.

11 SEC. 2. The Legislature finds and declares that the mortgage  
12 debt tax relief allowed to taxpayers in connection with the  
13 discharge of qualified principal residence indebtedness, as  
14 described in this act, serves a public purpose and does not constitute  
15 a gift of public funds within the meaning of Section 6 of Article  
16 XVI of the California Constitution.

17 SEC. 3. This act provides for a tax levy within the meaning of  
18 Article IV of the Constitution and shall go into immediate effect.

AMENDED IN SENATE FEBRUARY 8, 2008

**SENATE BILL**

**No. 1065**

---

---

**Introduced by Senator Correa**

January 8, 2008

---

---

*An act to add Sections 52013.6, 52013.7, 52017, and 52018 to the An act to amend Sections 52013 and 52020 of, and to add Section 52017 to, the Health and Safety Code, relating to housing, and declaring the urgency thereof, to take effect immediately.*

LEGISLATIVE COUNSEL'S DIGEST

SB 1065, as amended, Correa. Home financing programs: reverse ~~and subprime~~ home mortgages.

(1) Existing law, for purposes of a home financing program, provides that a city or county has specified powers and duties and may administer a home financing program to acquire, contract, and enter into advance commitments to acquire, home mortgages made or owned by lending institutions at the purchase prices and upon other terms and conditions as determined by the city or county.

This bill would define home mortgage; *and reverse mortgage, and subprime home mortgage. The refinancing of a home and reverse mortgages would be included in the criteria for establishing a maximum household income for the purposes of a city- or county-administered home financing program.*

(2) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. Section 52013 of the Health and Safety Code is  
 2 amended to read:

3     52013. (a) “Home mortgage” or “mortgage” means an  
 4 interest-bearing loan made as provided in this part to a mortgagor,  
 5 whether originated in the manner provided in subdivision (a) or  
 6 (b) of Section 52020, which is evidenced by a promissory note  
 7 and secured by a mortgage, deed of trust, or other security  
 8 instrument on a home, and which may but is not required to be  
 9 additionally secured by insurance on the payment of ~~such~~ *the* note,  
 10 for the purpose of purchasing, constructing, *refinancing*, or  
 11 improving a home ~~which that~~ *meets either any* of the following  
 12 criteria:

13     ~~(a)~~  
 14     (1) Is newly constructed or is being rehabilitated and ~~which~~  
 15 *that*, in either case, is located within an area or neighborhood in  
 16 which the city or county is conducting a housing rehabilitation or  
 17 code enforcement program; a neighborhood preservation area or  
 18 concentrated rehabilitation area designated pursuant to this  
 19 division; an area for which federal funds are being made available;  
 20 a renewal area as defined in Section 33702; or a residential  
 21 rehabilitation areas as defined in Section 37912; ~~provided, however,~~  
 22 ~~that~~. *However*, a loan may be made for the purchase of a newly  
 23 constructed home anywhere within the city or county if the  
 24 purchase is in connection with a program adopted by ordinance  
 25 of the city or county the purpose of which is to increase the housing  
 26 supply.

27     ~~(b)~~  
 28     (2) Is a home upon which no rehabilitation is being undertaken  
 29 in connection with any financing pursuant to this part, where the  
 30 purchaser will not be the first occupant and ~~which that~~ is located  
 31 within the city or county making or purchasing the home mortgage.

32     ~~A “home mortgage” or “mortgage” shall not include a loan to a~~  
 33 ~~mortgagor for the purpose of refinancing an existing obligation of~~  
 34 ~~the mortgagor, unless substantial rehabilitation is to be undertaken~~  
 35 ~~in connection with such loan.~~

36     (3) *Is an existing home within the city or county making or*  
 37 *purchasing the home mortgage and the owner is, and will be, the*  
 38 *occupant of the house.*

1 (b) “Home mortgage” or “mortgage” also means a reverse  
2 mortgage.

3 ~~SECTION 1. Section 52013.6 is added to the Health and Safety~~  
4 ~~Code, to read:~~

5 ~~52013.6. “Home mortgage” or “mortgage” means a loan that~~  
6 ~~may be an interest-bearing loan made as provided in this part to a~~  
7 ~~mortgagor, that is evidenced by a promissory note and secured by~~  
8 ~~a mortgage, deed of trust, or other security instrument on a home,~~  
9 ~~and which may, but is not required to be, additionally secured by~~  
10 ~~insurance on the payment of the note, for the purpose of refinancing~~  
11 ~~a subprime home mortgage with respect to a home located within~~  
12 ~~the city or county making or purchasing the home mortgage.~~

13 ~~SEC. 2. Section 52013.7 is added to the Health and Safety~~  
14 ~~Code, to read:~~

15 ~~52013.7. “Home mortgage” or “mortgage” means an~~  
16 ~~interest-bearing loan, including a reverse mortgage, made as~~  
17 ~~provided in this part to a mortgagor, that is evidenced by a~~  
18 ~~promissory note and secured by a mortgage, deed of trust, or other~~  
19 ~~security instrument on a home, and which may, but is not required~~  
20 ~~to be, additionally secured by insurance on the payment of the~~  
21 ~~note, for the purpose of assisting homeowners age 62 or older to~~  
22 ~~convert the equity in the home into cash with respect to a home~~  
23 ~~located within the city or county making or purchasing the home~~  
24 ~~mortgage.~~

25 ~~SEC. 3.~~

26 ~~SEC. 2. Section 52017 is added to the Health and Safety Code,~~  
27 ~~to read:~~

28 ~~52017. “Reverse mortgage” means a home loan that converts~~  
29 ~~a homeowner’s equity an interest-bearing home loan, made as~~  
30 ~~provided in this part to a mortgagor age 62 or older, that is~~  
31 ~~evidenced by a promissory note and secured by a mortgage, deed~~  
32 ~~of trust, or other security instrument on a home and that converts~~  
33 ~~the mortgagor’s equity in his or her home into cash, providing for~~  
34 ~~a lump sum payment, a stream of payments, or as a supplement to~~  
35 ~~Social Security or other retirement funds. No repayment is required~~  
36 ~~until the borrower no longer uses the home as their principal~~  
37 ~~residence.~~

38 ~~SEC. 4. Section 52018 is added to the Health and Safety Code,~~  
39 ~~to read:~~

1     52018. ~~“Subprime home mortgage” means a mortgage granted~~  
2 ~~to a borrower whose credit history is insufficient to obtain a~~  
3 ~~conventional mortgage, including, but not limited to, interest-only~~  
4 ~~loans, adjustable rate mortgages, “pick a payment” loans and initial~~  
5 ~~fixed rate mortgages that convert to a variable rate after a specified~~  
6 ~~time period.~~

7     *SEC. 3. Section 52020 of the Health and Safety Code is*  
8 *amended to read:*

9     52020. (a) For purposes of a home financing program  
10 authorized by this part, a city or county has the following powers  
11 and duties:

12     (1) To acquire, contract, and enter into advance commitments  
13 to acquire home mortgages made or owned by lending institutions  
14 at the purchase prices and upon the other terms and conditions as  
15 shall be determined by the city or county or other person as it may  
16 designate as its agent, to make and execute contracts with lending  
17 institutions for the origination and servicing of home mortgages,  
18 and to pay the reasonable value of services rendered under those  
19 contracts. Prior to executing any contract with a lending institution,  
20 a city or county shall adopt regulations establishing criteria for  
21 qualification of lending institutions eligible to originate and service  
22 home mortgages under home financing programs authorized by  
23 this part and shall, with respect to each home financing program,  
24 permit each qualified lending institution that transacts business in  
25 the city or county the opportunity to participate in the program on  
26 an equitable basis with other participating lending institutions.  
27 Two or more cities in the same county, a county and one or more  
28 cities within the county, or two or more adjacent counties and any  
29 number of cities within those counties may enter into an agreement  
30 to join or cooperate with one another in the exercise jointly, or  
31 otherwise, of any or all of their powers for the purpose of financing  
32 home mortgages pursuant to this part with respect to property  
33 within the boundaries of any one or more of the entities.

34     (2) To make loans to lending institutions under terms and  
35 conditions that, in addition to other provisions as determined by  
36 the city or county, require the lending institutions to use all of the  
37 net proceeds thereof, directly or indirectly, for the making of home  
38 mortgages in an aggregate principal amount equal to the amount  
39 of the net proceeds.

- 1 (3) To establish, by rules or regulations, in resolutions relating  
2 to any issuance of bonds, or in any documents relating to the  
3 issuance, standards and requirements applicable to the purchase  
4 of home mortgages or the making of loans to lending institutions  
5 as the city or county deems necessary or desirable to effectuate  
6 the purposes of this part, which may include without limitation  
7 any of the following:
- 8 (A) The time within which lending institutions are required to  
9 make commitments and disbursements for home mortgages.
  - 10 (B) The location and other characteristics of homes to be  
11 financed by home mortgages.
  - 12 (C) The terms and conditions of home mortgages to be acquired.
  - 13 (D) The amounts and types of any insurance coverage required  
14 on homes, home mortgages, and bonds.
  - 15 (E) The representations and warranties of lending institutions  
16 confirming compliance with the standards and requirements.
  - 17 (F) Restrictions as to interest rate and other terms of home  
18 mortgages or the return realized therefrom by lending institutions.
  - 19 (G) The type and amount of collateral security to be provided  
20 to assure repayment of any loans from the city or county and to  
21 assure repayment of bonds.
  - 22 (H) Any other matters related to the purchase of home mortgages  
23 or the making of loans to lending institutions as deemed relevant  
24 by the city or county.
- 25 (4) To require from each lending institution from which home  
26 mortgages are purchased or to which loans are made the submission  
27 of evidence satisfactory to the city or county of the ability and  
28 intention of the lending institution to make home mortgages, and  
29 the submission, within the time specified by the city or county for  
30 making disbursements for home mortgages, of evidence satisfactory  
31 to the city or county of the making of home mortgages and of  
32 compliance with any standards and requirements established by  
33 it.
- 34 (b) Each city or county that finances housing pursuant to this  
35 part shall designate a person or entity to administer the program.
  - 36 (c) Each city or county that finances housing pursuant to this  
37 part shall adopt regulations establishing criteria for qualification  
38 of persons and families, which may differ among different cities  
39 or counties to reflect varying economic and housing conditions.

1 In developing these criteria, factors similar to the following shall  
2 be taken into consideration:

3 (1) The amount of the income of the person or family that is  
4 available for housing needs.

5 (2) The size of the household.

6 (3) The costs and condition of available housing.

7 (4) The eligibility of the persons or families for federal housing  
8 assistance of any type.

9 (d) (1) Criteria for qualification of persons and families pursuant  
10 to this section shall include a maximum household income, which  
11 maximum shall not exceed the following:

12 (A) One hundred twenty percent of the median household  
13 income for mortgages made for improving a home, *for refinancing*  
14 *a home*, or for homes where the purchaser will be the first occupant.  
15 Upon the resale of a home for which financing was originally  
16 provided under this paragraph, the maximum income of persons  
17 and families *also* shall ~~also~~ be 120 percent of the median household  
18 income.

19 (B) One hundred twenty percent of the median household  
20 income for mortgages where the purchaser will not be the first  
21 occupant. However, the city or county shall ensure that no less  
22 than 50 percent of the funds allocated for home mortgages where  
23 the purchaser will not be the first occupant shall be for households  
24 whose income does not exceed 80 percent of that median household  
25 income. However, the legislative body of the city or county may,  
26 by resolution, increase this income limitation to 90 percent of  
27 median household income if the legislative body finds that there  
28 are insufficient numbers of creditworthy persons whose income  
29 does not exceed 80 percent of median household income. The  
30 resolution is final and conclusive as to the findings required by  
31 this paragraph.

32 (C) One hundred fifty percent of the median household income  
33 for mortgages made for improving a home, *for refinancing a home*,  
34 or for homes where the purchaser will be the first occupant in any  
35 city, the entire area of which, or in any county in which a portion  
36 of the county, is designated by the United States Department of  
37 Commerce, Economic Development Administration as a special  
38 impact area within a Title IV redevelopment area, pursuant to  
39 Section 401 of the federal Public Works and Economic  
40 Development Act of 1965, as amended, and that is eligible for

1 Urban Development Action Grant funds under the current distress  
2 standards established for cities and counties by the Secretary of  
3 the United States Department of Housing and Urban Development  
4 pursuant to Section 119 of the Housing and Community  
5 Development Act of 1974, if the homes purchased, *refinanced*, or  
6 improved are situated within the boundaries of a special impact  
7 area as defined by the Economic Development Administration,  
8 and that designation is in effect on the date of sale of revenue bonds  
9 issued under this part.

10 (D) *One hundred twenty percent of the median household*  
11 *income for reverse mortgages.*

12 (2) As used in this subdivision, “median household income”  
13 means the highest of (A) statewide median household income, (B)  
14 countywide median household income, or (C) median family  
15 income for an area, as determined by the United States Department  
16 of Housing and Urban Development, with respect to either a  
17 standard metropolitan statistical area or an area outside of a  
18 standard metropolitan statistical area.

19 (e) (1) Subdivision (d) shall not apply with respect to home  
20 finance programs funded with amounts made available by the  
21 issuance of revenue bonds that, for federal tax law purposes, are  
22 bonds refunding qualified mortgage bonds issued before January  
23 1, 1987, and that satisfy the requirements of subdivision (a) of  
24 Section 1313 of the federal Tax Reform Act of 1986. With respect  
25 to these programs, the maximum household income for  
26 qualification of persons and families pursuant to this section shall  
27 be the following:

28 (A) One hundred fifty percent of the median household income  
29 for mortgages made for improving a home or for homes where the  
30 purchaser will be the first occupant. Upon the resale of a home for  
31 which financing was originally provided under this paragraph, the  
32 maximum income of persons and families *also* shall ~~also~~ be 150  
33 percent of the median household income. For purposes of this  
34 paragraph, a mortgage made for improving a home includes a  
35 home improvement loan as defined in Section 143 of Title 26 of  
36 the United States Code.

37 (B) One hundred twenty percent of the median household  
38 income where the purchaser will not be the first occupant.  
39 However, the city or county shall ensure that no less than 20  
40 percent of the funds allocated for home mortgages where the

1 purchaser will not be the first occupant shall be for households  
2 whose income does not exceed 110 percent of that median  
3 household income. However, the legislative body of the city or  
4 county may, by resolution, increase this income limitation to 120  
5 percent of the median household income if the legislative body  
6 finds that there are insufficient numbers of creditworthy persons  
7 whose income does not exceed 110 percent of the median  
8 household income. The resolution is final and conclusive as to the  
9 findings required by this paragraph. However, the finding shall  
10 not be made by the legislative body before six months from the  
11 date mortgages were first made under the program and only if  
12 participating lenders have entered into an agreement with the city,  
13 county, or city and county that lenders will advertise at least  
14 monthly the availability of funds and will forfeit one-quarter of  
15 their origination fees if they are unable to use 20 percent of the  
16 funds to make mortgages to households whose income does not  
17 exceed 110 percent of the median income.

18 (C) One hundred fifty percent of the median household income  
19 for mortgages made for improving a home or for homes where the  
20 purchaser will be the first occupant in any city, the entire area of  
21 which, or in any county in which a portion of the county, is  
22 designated by the United States Department of Commerce,  
23 Economic Development Administration as a special impact area  
24 within a Title IV redevelopment area, pursuant to Section 401 of  
25 the federal Public Works and Economic Development Act of 1965,  
26 as amended, and that is eligible for Urban Development Action  
27 Grant funds under the current distress standards established for  
28 cities and counties by the Secretary of the United States Department  
29 of Housing and Urban Development pursuant to Section 119 of  
30 the Housing and Community Development Act of 1974, if the  
31 homes purchased or improved are situated within the boundaries  
32 of a special impact area as defined by the Economic Development  
33 Administration, and that designation is in effect on the date of sale  
34 of revenue bonds issued under this part.

35 (2) As used in this subdivision, “median household income”  
36 means the highest of (A) statewide median household income, (B)  
37 countywide median household income, or (C) median family  
38 income for an area, as determined by the United States Department  
39 of Housing and Urban Development, with respect to either a

1 standard metropolitan statistical area or an area outside of a  
2 standard metropolitan statistical area.

3 (f) Each city or county that finances housing pursuant to this  
4 part shall require each mortgagor under the program to certify his  
5 or her intention to occupy the home for a minimum of two years  
6 after receiving a home mortgage, with appropriate exceptions in  
7 hardship cases determined by the city or county.

8 (g) Each city and county may do any and all things necessary  
9 to carry out the purposes and exercise the powers expressly granted  
10 by this part.

11 ~~SEC. 5.~~

12 *SEC. 4.* This act is an urgency statute necessary for the  
13 immediate preservation of the public peace, health, or safety within  
14 the meaning of Article IV of the Constitution and shall go into  
15 immediate effect. The facts constituting the necessity are:

16 Current law prohibits cities and counties from refinancing home  
17 mortgages except in conjunction with substantial rehabilitation of  
18 the home. This prevents cities and counties from offering  
19 refinancing to subprime home mortgage borrowers for the purpose  
20 of reducing foreclosures. Similarly, cities and counties are  
21 prohibited from offering reverse mortgages to older California  
22 homeowners on limited, fixed incomes.

23 A large number of California homeowners are at risk of default  
24 on their mortgages and are being subjected to foreclosure that will  
25 have a significant adverse effect on the economies of numerous  
26 local communities throughout the state. Without changes that  
27 provide for refinancing subprime home mortgages, a city's or  
28 county's ability to mitigate the economic impact of these defaults  
29 will continue to be limited and the state's housing crisis further  
30 exacerbated.

31 Many older California homeowners have significant equity in  
32 their homes but have limited, fixed incomes and the ability to  
33 remain in their homes is at risk. Without the reverse mortgage  
34 clarification with respect to home mortgage financing, the ability  
35 of cities and counties to offer reverse mortgages designed to  
36 strengthen older California homeowners' personal and financial  
37 independence will be in jeopardy.

- 1
- 2 **CORRECTIONS:**
- 3 **Text—Pages 3 and 9.**
- 4

\_\_\_\_\_

\_\_\_\_\_

O

AMENDED IN ASSEMBLY JANUARY 24, 2008

AMENDED IN ASSEMBLY JANUARY 7, 2008

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 180**

---

---

**Introduced by Assembly ~~Member Bass~~ *Members Bass and Lieu***  
**(Coauthors: Assembly Members Lieber and Wolk)**

January 24, 2007

---

---

An act to amend Sections 2945.1, 2945.2, 2945.3, and 2945.4 of, and to add Section 2945.45 to, the Civil Code, relating to mortgages.

LEGISLATIVE COUNSEL'S DIGEST

AB 180, as amended, Bass. Mortgages: foreclosure consultants.

Existing law defines a foreclosure consultant as a person who offers, for compensation, to perform specified services for a homeowner relating to a foreclosure sale, except as specified. Existing *law authorizes a foreclosure consultant to assist the owner of a residence in obtaining the remaining proceeds from a foreclosure sale of that residence.*

*This bill would delete the provisions of law authorizing a foreclosure consultant to provide the service described above.*

*Existing law allows a homeowner to cancel a contract with a foreclosure consultant within 3 days after signing the contract by providing written notice of the cancellation at the address provided by the foreclosure consultant. Existing law requires that the contract be written in the same language as principally used by the foreclosure consultant to describe his or her services or to negotiate the contract. Existing law prohibits a foreclosure consultant from taking any power of attorney from an owner, except to inspect documents as provided by law.*

This bill would instead allow a homeowner to cancel a contract with a foreclosure consultant ~~at any time within 5 days after signing the contract,~~ and to do so by mail, e-mail, or facsimile. It would require that a contract with a foreclosure consultant be written in the language principally used by the homeowner ~~if the homeowner's ability to understand or to express himself or herself in spoken or written English is inadequate~~ foreclosure consultant to describe his or her services or to negotiate the contract, and would require the foreclosure consultant, in specified circumstances, to provide the owner, before the owner signs the contract, with one or more copies of a completed contract written in other languages. The bill would ~~require that a homeowner have at least 24 hours to review a proposed contract,~~ and would prohibit a foreclosure consultant from taking any power of attorney from an owner for any purpose.

The bill would require a foreclosure consultant to register with the Department of Justice *in accordance with certain requirements,* and to obtain and maintain a surety bond ~~of \$25,000 for each transaction of \$100,000.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
 State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1     SECTION 1. Section 2945.1 of the Civil Code is amended to  
 2     read:  
 3     2945.1. The following definitions apply to this chapter:  
 4     (a) "Foreclosure consultant" means any person who makes any  
 5     solicitation, representation, or offer to any owner to perform for  
 6     compensation or who, for compensation, performs any service  
 7     ~~which~~ that the person in any manner represents will in any manner  
 8     do any of the following:  
 9     (1) Stop or postpone the foreclosure sale.  
 10    (2) Obtain any forbearance from any beneficiary or mortgagee.  
 11    (3) Assist the owner to exercise the right of reinstatement  
 12    provided in Section 2924c.  
 13    (4) Obtain any extension of the period within which the owner  
 14    may reinstate his or her obligation.  
 15    (5) Obtain any waiver of an acceleration clause contained in  
 16    any promissory note or contract secured by a deed of trust or

1 mortgage on a residence in foreclosure or contained *in* that deed  
2 of trust or mortgage.

3 (6) Assist the owner to obtain a loan or advance of funds.

4 (7) Avoid or ameliorate the impairment of the owner's credit  
5 resulting from the recording of a notice of default or the conduct  
6 of a foreclosure sale.

7 (8) Save the owner's residence from foreclosure.

8 ~~(9) Assist the owner in obtaining from the beneficiary,~~  
9 ~~mortgagee, trustee under a power of sale, or counsel for the~~  
10 ~~beneficiary, mortgagee, or trustee, the remaining proceeds from~~  
11 ~~the foreclosure sale of the owner's residence.~~

12 (b) A foreclosure consultant does not include any of the  
13 following:

14 (1) A person licensed to practice law in this state when the  
15 person renders service in the course of his or her practice as an  
16 attorney at law.

17 (2) A person licensed under Division 3 (commencing with  
18 Section 12000) of the Financial Code when the person is acting  
19 as a prorater, as defined ~~therein~~ *in that division*.

20 (3) A person licensed under Part 1 (commencing with Section  
21 10000) of Division 4 of the Business and Professions Code when  
22 the person makes a direct loan or when the person ~~(A) engages~~  
23 *satisfies all of the following:*

24 (A) *The person engages* in acts whose performance requires  
25 licensure under that part, ~~(B) is~~.

26 (B) *The person is* entitled to compensation for the acts performed  
27 in connection with the sale of a residence in foreclosure or with  
28 the arranging of a loan secured by a lien on a residence in  
29 foreclosure, ~~(C) does~~.

30 (C) *The person does* not claim, demand, charge, collect, or  
31 receive any compensation until the acts have been performed or  
32 cannot be performed because of an owner's failure to make the  
33 disclosures set forth in Section 10243 of the Business and  
34 Professions Code or failure to accept an offer from a purchaser or  
35 lender ready, willing, and able to purchase a residence in  
36 foreclosure or make a loan secured by a lien on a residence in  
37 foreclosure on the terms prescribed in a listing or a loan agreement;  
38 ~~and (D) does~~.

39 (D) *The person does* not acquire any interest in a residence in  
40 foreclosure directly from an owner for whom the person agreed

1 to perform the acts, other than as a trustee or beneficiary under a  
2 deed of trust given to secure the payment of a loan or that  
3 compensation. For the purposes of this paragraph, a “direct loan”  
4 means a loan of a real estate broker’s own funds secured by a deed  
5 of trust on the residence in foreclosure, which loan and deed of  
6 trust the broker in good faith attempts to assign to a lender, for an  
7 amount at least sufficient to cure all of the defaults on obligations  
8 ~~which~~ *that* are then subject to a recorded notice of default, provided  
9 that, if a foreclosure sale is conducted with respect to the deed of  
10 trust, the person conducting the foreclosure sale has no interest in  
11 the residence in foreclosure or in the outcome of the sale and *the*  
12 *residence* is not owned, controlled, or managed by the lending  
13 broker; the lending broker does not acquire any interest in the  
14 residence in foreclosure directly from the owner, other than as a  
15 beneficiary under the deed of trust; and the loan is not made for  
16 the purpose or effect of avoiding or evading the provisions of this  
17 article.

18 (4) A person licensed under Chapter 1 (commencing with  
19 Section 5000) of Division 3 of the Business and Professions Code  
20 when the person is acting in any capacity for which the person is  
21 licensed under those provisions.

22 (5) A person or his or her authorized agent acting under the  
23 express authority or written approval of the Department of Housing  
24 and Urban Development or other department or agency of the  
25 United States or this state to provide services.

26 (6) A person who holds or is owed an obligation secured by a  
27 lien on any residence in foreclosure when the person performs  
28 services in connection with this obligation or lien.

29 (7) Any person licensed to make loans pursuant to Division 9  
30 (commencing with Section 22000), 10 (commencing with Section  
31 24000), or 11 (commencing with Section 26000) of the Financial  
32 Code, subject to the authority of the Commissioner of Corporations  
33 to terminate this exclusion, after notice and hearing, for any person  
34 licensed pursuant to any of those divisions upon a finding that the  
35 licensee is found to have engaged in practices described in  
36 subdivision (a) of Section 2945.

37 (8) ~~Any person or entity doing~~ *of the following persons or*  
38 *entities:*

39 (A) *A person or entity doing* business under any law of this state,  
40 or of the United States, relating to banks, trust companies, savings

1 and loan associations, industrial loan companies, pension trusts,  
2 credit unions, insurance companies, ~~or any person.~~

3 (B) A person or entity authorized under the laws of this state to  
4 conduct a title or escrow business, ~~or a~~.

5 (C) A mortgagee ~~which that is a~~ *an approved mortgagee of the*  
6 *United States Department of Housing and Urban Development*  
7 *approved mortgagee and any.*

8 (D) A subsidiary or affiliate of ~~the above~~ *any person or entity*  
9 *described in subparagraphs (A) to (C), inclusive, and any agent*  
10 *or employee of the above such a person or entity while engaged*  
11 *in the business of these persons or entities that person or entity.*

12 (9) A person licensed as a residential mortgage lender or servicer  
13 pursuant to Division 20 (commencing with Section 50000) of the  
14 Financial Code, when acting under the authority of that license.

15 (e) ~~Notwithstanding subdivision (b), any person who provides~~  
16 ~~services pursuant to paragraph (9) of subdivision (a) is a foreclosure~~  
17 ~~consultant unless he or she is the owner's attorney.~~

18 (d)

19 (c) "Person" means any individual, partnership, corporation,  
20 limited liability company, association or other group, however  
21 organized.

22 (e)

23 (d) "Service" means and includes, but is not limited to, any of  
24 the following:

25 (1) Debt, budget, or financial counseling of any type.

26 (2) Receiving money for the purpose of distributing it to  
27 creditors in payment or partial payment of any obligation secured  
28 by a lien on a residence in foreclosure.

29 (3) Contacting creditors on behalf of an owner of a residence  
30 in foreclosure.

31 (4) Arranging or attempting to arrange for an extension of the  
32 period within which the owner of a residence in foreclosure may  
33 cure his or her default and reinstate his or her obligation pursuant  
34 to Section 2924c.

35 (5) Arranging or attempting to arrange for any delay or  
36 postponement of the time of sale of the residence in foreclosure.

37 (6) Advising the filing of any document or assisting in any  
38 manner in the preparation of any document for filing with any  
39 bankruptcy court.

1 (7) Giving any advice, explanation or instruction to an owner  
 2 of a residence in foreclosure ~~which~~ *that* in any manner relates to  
 3 the cure of a default in or the reinstatement of an obligation secured  
 4 by a lien on the residence in foreclosure, the full satisfaction of  
 5 that obligation, or the postponement or avoidance of a sale of a  
 6 residence in foreclosure pursuant to a power of sale contained in  
 7 any deed of trust.

8 ~~(8) Arranging or attempting to arrange for the payment by the~~  
 9 ~~beneficiary, mortgagee, trustee under a power of sale, or counsel~~  
 10 ~~for the beneficiary, mortgagee, or trustee, of the remaining proceeds~~  
 11 ~~to which the owner is entitled from a foreclosure sale of the~~  
 12 ~~owner's residence in foreclosure. Arranging or attempting to~~  
 13 ~~arrange for the payment shall include any arrangement where the~~  
 14 ~~owner transfers or assigns the right to the remaining proceeds of~~  
 15 ~~a foreclosure sale to the foreclosure consultant or any person~~  
 16 ~~designated by the foreclosure consultant, whether that transfer is~~  
 17 ~~effected by agreement, assignment, deed, power of attorney, or~~  
 18 ~~assignment of claim.~~

19 ~~(f)~~  
 20 (e) "Residence in foreclosure" means a residence in foreclosure  
 21 as defined in Section 1695.1.

22 ~~(g)~~  
 23 (f) "Owner" means a property owner as defined in Section  
 24 1695.1.

25 ~~(h)~~  
 26 (g) "Contract" means any agreement, or any term thereof,  
 27 between a foreclosure consultant and an owner for the rendition  
 28 of any service as defined in subdivision ~~(e)~~ (d).

29 **SECTION 1.**

30 *SEC. 2.* Section 2945.2 of the Civil Code is amended to read:

31 2945.2. (a) In addition to any other right under law to rescind  
 32 a contract, an owner has the right to cancel such a contract ~~at any~~  
 33 ~~time.~~ *until midnight of the fifth business day, as defined in*  
 34 *subdivision (e) of Section 1689.5, after the day on which the owner*  
 35 *signs a contract that complies with Section 2945.3.*

36 (b) Cancellation occurs when the owner gives written notice of  
 37 cancellation to the foreclosure consultant by mail at the address  
 38 specified in the contract, or by facsimile or electronic mail at the  
 39 number or address identified in the contract ~~or other materials~~  
 40 ~~provided to the owner by the foreclosure consultant.~~

1 (c) Notice of cancellation, if given by mail, is effective when  
2 deposited in the mail properly addressed with postage prepaid. If  
3 given by facsimile or electronic mail, notice of cancellation is  
4 effective when successfully transmitted.

5 (d) Notice of cancellation given by the owner need not take the  
6 particular form as provided with the contract and, however  
7 expressed, is effective if it indicates the intention of the owner not  
8 to be bound by the contract.

9 ~~SEC. 2.~~

10 *SEC. 3.* Section 2945.3 of the Civil Code is amended to read:

11 2945.3. (a) Every contract shall be in writing and shall fully  
12 disclose the exact nature of the foreclosure consultant's services  
13 and the total amount and terms of compensation.

14 (b) The following notice, printed in at least 14-point boldface  
15 type and completed with the name of the foreclosure consultant,  
16 shall be printed immediately above the statement required by  
17 subdivision (c):

18  
19 "NOTICE REQUIRED BY CALIFORNIA LAW  
20 \_\_\_\_\_ or anyone working

21  
22 (Name)

23  
24 for him or her CANNOT:

25 (1) Take any money from you or ask you for money  
26 until \_\_\_\_\_ has

27  
28 (Name)

29 completely finished doing everything he or she said he or she would do; and  
30 (2) Ask you to sign or have you sign any lien, deed of trust, or deed."

31  
32 (c) The contract shall be written in the same language as  
33 principally used by the owner if the owner's ability to understand  
34 or to express himself or herself in spoken or written English is  
35 inadequate. ~~The contract shall fully disclose the exact nature of~~  
36 ~~the foreclosure consultant services, and the owner shall be provided~~  
37 ~~with an opportunity to negotiate the contract. The foreclosure~~  
38 ~~consultant to describe his or her services or to negotiate the~~  
39 ~~contract. In addition, the foreclosure consultant shall provide the~~  
40 ~~owner, before the owner signs the contract, with a copy of a~~

1 *completed contract written in any other language used in any*  
2 *communication between the foreclosure consultant and the owner*  
3 *and in any language requested by the owner. If English is the*  
4 *language principally used by the foreclosure consultant to describe*  
5 *the foreclosure consultant’s services or to negotiate the contract,*  
6 *the foreclosure consultant shall notify the owner orally and in*  
7 *writing before the owner signs the contract that the owner has the*  
8 *right to ask for a completed copy of the contract in a language*  
9 *other than English.*

10 (d) The contract shall be dated and signed by the owner and  
11 shall contain in immediate proximity to the space reserved for the  
12 owner’s signature a conspicuous statement in a size equal to at  
13 least 10-point boldface type, as follows: “You, the owner, may  
14 cancel this transaction at any time. See the attached notice of  
15 cancellation form for an explanation of this right.”

16 ~~(d) The owner shall have at least 24 hours from the time he or~~  
17 ~~she receives the proposed contract from the foreclosure consultant~~  
18 ~~to review the contract terms. The owner may consult an attorney,~~  
19 ~~tax advisor, or other advisor prior to signing the contract.~~

20 (e) The contract shall contain on the first page, in a type size  
21 no smaller than that generally used in the body of the document,  
22 each of the following:

23 (1) The name, mailing address, electronic mail address, and  
24 facsimile number of the foreclosure consultant to which the notice  
25 or cancellation is to be mailed.

26 (2) The date the owner signed the contract.

27 (f) The contract shall be accompanied by a completed form in  
28 duplicate, captioned “notice of cancellation,” which shall be  
29 attached to the contract, shall be easily detachable, and shall contain  
30 in type of at least 10-point the following statement written in the  
31 same language as used in the contract:

32  
33 “NOTICE OF CANCELLATION

34 \_\_\_\_\_  
35 (Enter date of transaction) (Date)

36  
37 You may cancel this transaction, without any penalty or  
38 obligation, at any time.

39 ~~To cancel this transaction, mail or deliver, by regular mail, e-mail, facsimile,~~  
40 ~~or telegram, a signed and dated~~

1 ~~copy of this cancellation notice, or any other written notice~~  
2 ~~within five business days from the above date.~~

3 *To cancel this transaction, mail or deliver a signed and dated copy of this*  
4 *cancellation notice, or any other written notice, or send a telegram.*

5  
6 to \_\_\_\_\_  
7 (Name of foreclosure consultant)  
8 at \_\_\_\_\_  
9 (Address of foreclosure consultant’s place of business)

10  
11 *You may also cancel by sending a facsimile (fax) of a signed and dated copy*  
12 *of this cancellation notice, or any other written notice, to the following number:*

13 \_\_\_\_\_  
14 *(Facsimile telephone number of foreclosure consultant’s place of business)*

15 *You may also cancel by sending an e-mail canceling this transaction to the*  
16 *following e-mail address:*

17 \_\_\_\_\_  
18 *(E-mail address of foreclosure consultant’s business)*

19  
20 I hereby cancel this transaction  
21 \_\_\_\_\_  
22 (Date)  
23 \_\_\_\_\_”  
24 (Owner’s signature)

25  
26  
27 (g) The foreclosure consultant shall provide the owner with a  
28 copy of the contract and the attached notice of cancellation.

29 ~~(h) After the 65-day period following the foreclosure sale, the~~  
30 ~~foreclosure consultant may enter into a contract to assist the owner~~  
31 ~~in arranging, or arrange for the owner, the release of funds~~  
32 ~~remaining after the foreclosure sale (“surplus funds”) from the~~  
33 ~~beneficiary, mortgagee, trustee under a power of sale, or counsel~~  
34 ~~for the beneficiary, mortgagee, or trustee. However, prior to~~  
35 ~~entering into that contract, the foreclosure consultant shall do all~~  
36 ~~of the following:~~

37 ~~(1) Prepare and deliver to the owner a notice in 14-point~~  
38 ~~boldface type and substantially in the form set forth below.~~

1 (2) Obtain a receipt executed by each owner and acknowledged  
2 before a notary public, acknowledging a copy of the notice set  
3 forth below.

4  
5 "NOTICE TO OWNER

6 \_\_\_\_\_  
7 (Date of Contract) (Date signed by Owner)  
8 \_\_\_\_\_  
9 (Date of Foreclosure Sale)

10  
11 You may be entitled to receive all or a portion of the surplus funds generated  
12 from the foreclosure sale of your real property located  
13 at: \_\_\_\_\_, California  
14 on \_\_\_\_\_ without paying any fees or costs of any  
15 kind to a third party. You should check directly with the trustee or beneficiary  
16 who conducted the foreclosure sale of your property to determine the name,  
17 address, and telephone number of the party to whom you can direct inquiries  
18 regarding filing a claim for surplus funds without paying a fee to a third party.  
19 No person or entity may require you to enter into any agreement requiring the  
20 payment of a fee to that person or entity in order to receive the surplus funds  
21 from the foreclosure sale to which you may be entitled during the 65 days after  
22 the date of the trustee's sale."

23  
24 SEC. 3.

25 SEC. 4. Section 2945.4 of the Civil Code is amended to read:

26 2945.4. It shall be a violation for a foreclosure consultant to:

27 (a) Claim, demand, charge, collect, or receive any compensation  
28 until after the foreclosure consultant has fully performed each and  
29 every service the foreclosure consultant contracted to perform or  
30 represented that he or she would perform.

31 (b) Claim, demand, charge, collect, or receive any fee, interest,  
32 or any other compensation for any reason which exceeds 10 percent  
33 per annum of the amount of any loan which the foreclosure  
34 consultant may make to the owner.

35 (c) Take any wage assignment, any lien of any type on real or  
36 personal property, or other security to secure the payment of  
37 compensation. That security shall be void and unenforceable.

38 (d) Receive any consideration from any third party in connection  
39 with services rendered to an owner unless that consideration is  
40 fully disclosed to the owner.

1 (e) Acquire any interest in a residence in foreclosure from an  
 2 owner with whom the foreclosure consultant has contracted. Any  
 3 interest acquired in violation of this subdivision shall be voidable,  
 4 provided that nothing herein shall affect or defeat the title of a  
 5 bona fide purchaser or encumbrancer for value and without notice  
 6 of a violation of this article. Knowledge that the property was  
 7 “residential real property in foreclosure,” does not constitute notice  
 8 of a violation of this article. This subdivision may not be deemed  
 9 to abrogate any duty of inquiry which exists as to rights or interests  
 10 of persons in possession of residential real property in foreclosure.

11 (f) Take any power of attorney from an owner for any purpose.

12 (g) Induce or attempt to induce any owner to enter into a contract  
 13 which does not comply in all respects with Sections 2945.2 and  
 14 2945.3.

15 (h) Enter into an agreement to assist the owner in arranging, or  
 16 arrange for the owner, the release of surplus funds prior to 65 days  
 17 after the trustee’s sale is conducted, whether the agreement involves  
 18 direct payment, assignment, deed, power of attorney, or assignment  
 19 of claim from an owner to the foreclosure consultant or any person  
 20 designated by the foreclosure consultant.

21 ~~SEC. 4.~~

22 *SEC. 5.* Section 2945.45 is added to the Civil Code, to read:

23 2945.45. (a) Except as provided in subdivision (b) of Section  
 24 2945.1, a person shall not take any action specified in subdivision  
 25 (a) of Section 2945.1 unless the person satisfies the following  
 26 requirements:

27 ~~(a) The person registers as a foreclosure consultant with the~~  
 28 ~~Department of Justice.~~

29 ~~(b) The person obtains and maintains in force a surety bond in~~  
 30 ~~the amount of twenty-five thousand dollars (\$25,000).~~

31 *(1) The person registers with, and is issued and maintains a*  
 32 *certificate of registration from, the Department of Justice in*  
 33 *accordance with the following requirements:*

34 *(A) The person shall submit a completed registration form,*  
 35 *along with applicable fees, to the department. The registration*  
 36 *form shall include the name, address, and telephone number of*  
 37 *the foreclosure consultant, identify all of the names, addresses,*  
 38 *telephone numbers, Internet Web sites, and e-mail addresses used*  
 39 *or proposed to be used in connection with acting as a foreclosure*  
 40 *consultant, a statement that the person has not been convicted of,*

1 *or pled nolo contendere to, any crime involving fraud,*  
2 *misrepresentation, dishonesty, or a violation of this article, a*  
3 *statement that the person has not been liable under any civil*  
4 *judgment for fraud, misrepresentation, or violations of this article*  
5 *or of Section 17200 or 17500 of the Business and Professions*  
6 *Code, and any additional information required by the department.*

7 *(B) The registration form shall be accompanied by a copy of*  
8 *all print or electronic advertising and other promotional material,*  
9 *and scripts of all telephonic or broadcast advertising and other*  
10 *statements used or proposed to be used in connection with acting*  
11 *as a foreclosure consultant.*

12 *(C) The registration form shall be accompanied by a copy of*  
13 *the bond required pursuant to paragraph (2).*

14 *(D) The person shall file an update of any material change in*  
15 *the information required by subparagraphs (A) and (B) with the*  
16 *department.*

17 *(E) The person shall pay any fee set by the department to defray*  
18 *reasonable costs incurred in connection with the department's*  
19 *responsibilities under this article.*

20 *(2) The person obtains and maintains in force a surety bond for*  
21 *each transaction in the amount of one hundred thousand dollars*  
22 *(\$100,000). The bond shall be executed by a corporate surety*  
23 *admitted to do business in this state. The bond shall be made in*  
24 *favor of the homeowner or, if the homeowner cannot be found, in*  
25 *favor of the State of California for the benefit of the homeowner*  
26 *for damages caused by the foreclosure consultant's violation of*  
27 *this article or any other provision of law. A copy of the bond shall*  
28 *be filed with the Secretary of State, with a copy provided to the*  
29 *department pursuant to subparagraph (C) of paragraph (1).*

30 *(b) The Department of Justice may refuse to issue, or may*  
31 *revoke, a certificate of registration because of any misstatement*  
32 *in the registration form, because the foreclosure consultant has*  
33 *been held liable for the violation of any law described in*  
34 *subparagraph (A) of paragraph (1) of subdivision (a), or because*  
35 *the foreclosure consultant has failed to maintain the bond required*  
36 *under paragraph (2) of subdivision (a).*

O

**ASSEMBLY BILL**

**No. 2359**

---

---

**Introduced by Assembly Member Jones**

February 21, 2008

---

---

An act to amend Section 4970 of the Financial Code, relating to covered loans.

LEGISLATIVE COUNSEL'S DIGEST

AB 2359, as introduced, Jones. Covered loans.

Existing law imposes certain limitations and prohibitions on licensed persons, including real estate brokers, finance lenders, residential mortgage lenders, and financial institutions, with respect to consumer loans and covered loans, as defined. Existing law defines a covered loan as a consumer loan that does not exceed the federal conforming loan limit, as specified, and either the interest rate exceeds a specified percentage rate or the total points and fees payable by the consumer will exceed 6% of the total loan amount. Violations of these limitations and prohibitions by licensed persons are deemed to be violations of the person's licensing law and may be punishable by, among other things, criminal action, disciplinary action, civil liability, and the imposition of administrative and civil penalties up to \$25,000, as specified.

This bill would provide that a covered loan includes those specified loans where the total points and fees payable by the consumer will exceed 5% of the total loan amount. Because violations of the limitations and prohibitions relative to covered loans may be punished as crimes under certain licensed persons' licensing laws, redefining the term "covered loan" would expand the scope of these crimes and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 4970 of the Financial Code is amended  
2 to read:

3 4970. For purposes of this division:

4 (a) “Annual percentage rate” means the annual percentage rate  
5 for the loan calculated according to the provisions of the federal  
6 Truth in Lending Act and the regulations adopted thereunder by  
7 the Federal Reserve Board.

8 (b) “Covered loan” means a consumer loan in which the original  
9 principal balance of the loan does not exceed the most current  
10 conforming loan limit for a single-family first mortgage loan  
11 established by the Federal National Mortgage Association in the  
12 case of a mortgage or deed of trust, and where one of the following  
13 conditions are met:

14 (1) For a mortgage or deed of trust, the annual percentage rate  
15 at consummation of the transaction will exceed by more than eight  
16 percentage points the yield on Treasury securities having  
17 comparable periods of maturity on the 15th day of the month  
18 immediately preceding the month in which the application for the  
19 extension of credit is received by the creditor.

20 (2) The total points and fees payable by the consumer at or  
21 before closing for a mortgage or deed of trust will exceed ~~6~~ 5  
22 percent of the total loan amount.

23 (c) “Points and fees” shall include the following:

24 (1) All items required to be disclosed as finance charges under  
25 Sections 226.4(a) and 226.4(b) of Title 12 of the Code of Federal  
26 Regulations, including the Official Staff Commentary, as amended  
27 from time to time, except interest.

28 (2) All compensation and fees paid to mortgage brokers in  
29 connection with the loan transaction.

1 (3) All items listed in Section 226.4(c)(7) of Title 12 of the Code  
2 of Federal Regulations, only if the person originating the covered  
3 loan receives direct compensation in connection with the charge.

4 (d) “Consumer loan” means a consumer credit transaction that  
5 is secured by real property located in this state used, or intended  
6 to be used or occupied, as the principal dwelling of the consumer  
7 that is improved by a one-to-four residential unit. “Consumer loan”  
8 does not include a reverse mortgage, an open line of credit as  
9 defined in Part 226 of Title 12 of the Code of Federal Regulations  
10 (Regulation Z), or a consumer credit transaction that is secured by  
11 rental property or second homes. “Consumer loan” does not include  
12 a bridge loan. For purposes of this division, a bridge loan is any  
13 temporary loan, having a maturity of one year or less, for the  
14 purpose of acquisition or construction of a dwelling intended to  
15 become the consumer’s principal dwelling.

16 (e) “Original principal balance” means the total initial amount  
17 the consumer is obligated to repay on the loan.

18 (f) “Licensing agency” shall mean the Department of Real Estate  
19 for licensed real estate brokers, the Department of Corporations  
20 for licensed residential mortgage lenders and licensed finance  
21 lenders and brokers, and the Department of Financial Institutions  
22 for commercial and industrial banks and savings associations and  
23 credit unions organized in this state.

24 (g) “Licensed person” means a real estate broker licensed under  
25 the Real Estate Law (Part 1 (commencing with Section 10000) of  
26 Division 4 of the Business and Professions Code), a finance lender  
27 or broker licensed under the California Finance Lenders Law  
28 (Division 9 (commencing with Section 22000)), a residential  
29 mortgage lender licensed under the California Residential Mortgage  
30 Lending Act (Division 20 (commencing with Section 50000)), a  
31 commercial or industrial bank organized under the Banking Law  
32 (Division 1 (commencing with Section 99)), a savings association  
33 organized under the Savings Association Law (Division 2  
34 (commencing with Section 5000)), and a credit union organized  
35 under the California Credit Union Law (Division 5 (commencing  
36 with Section 14000)). Nothing in this division shall be construed  
37 to prevent any enforcement by a governmental entity against any  
38 person who originates a loan and who is exempt or excluded from  
39 licensure by all of the licensing agencies, based on a violation of  
40 any provision of this division. Nothing in this division shall be

1 construed to prevent the Department of Real Estate from enforcing  
2 this division against a licensed salesperson employed by a licensed  
3 real estate broker as if that salesperson were a licensed person  
4 under this division. A licensed person includes any person engaged  
5 in the practice of consumer lending, as defined in this division, for  
6 which a license is required under any other provision of law, but  
7 whose license is invalid, suspended or revoked, or where no license  
8 has been obtained.

9 (h) “Originate” means to arrange, negotiate, or make a consumer  
10 loan.

11 (i) “Servicer” has the same meaning provided in Section 6 (i)(2)  
12 of the Real Estate Settlement Procedures Act of 1974.

13 SEC. 2. No reimbursement is required by this act pursuant to  
14 Section 6 of Article XIII B of the California Constitution because  
15 the only costs that may be incurred by a local agency or school  
16 district will be incurred because this act creates a new crime or  
17 infraction, eliminates a crime or infraction, or changes the penalty  
18 for a crime or infraction, within the meaning of Section 17556 of  
19 the Government Code, or changes the definition of a crime within  
20 the meaning of Section 6 of Article XIII B of the California  
21 Constitution.

AMENDED IN SENATE JANUARY 24, 2008

AMENDED IN SENATE JANUARY 18, 2008

AMENDED IN SENATE JANUARY 7, 2008

**SENATE BILL**

**No. 926**

---

---

**Introduced by Senators Perata, Corbett, and Machado  
(Coauthors: Senators Cedillo, Migden, Romero, and Wiggins)**

February 23, 2007

---

---

An act to add and repeal Sections 2923.5, 2923.6, 2924.8, and 2929.3 of the Civil Code, and to add and repeal Section 1161b of the Code of Civil Procedure, relating to mortgages, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 926, as amended, Perata. ~~Mortgages.~~ *Residential mortgage loans: foreclosure procedures.*

(1) Existing law requires every mortgage instrument to meet specified requirements. Existing law invalidates any change in interest provided for in any provision for a variable interest rate contained in a security document, as defined, or evidence of debt issued therewith, unless the provision is set forth in the security document or evidence of debt, the document or documents contain, among others, a statement notifying the borrower that the mortgage may provide for changes in interest, principal loan balance, payment, or loan terms, and, upon a change in interest rate, the borrower is mailed specified information on the base index and interest rate change.

Until January 1, 2013, this bill would require, commencing at 120, 90, and 45 days prior to any projected ~~change~~ *increase of at least 10%* in a residential mortgage payment amount *for a loan made on or before*

*December 31, 2007, that is for an owner-occupied residence, the mailing of specified information related to the interest rate change and payment due, in plain language at a specified reading level and in the language in which the mortgage was negotiated, as specified.*

(2) Upon a breach of the obligation of a mortgage or transfer of an interest in property, existing law requires the trustee, mortgagee, or beneficiary to record in the office of the county recorder wherein the mortgaged or trust property is situated, a notice of default, and to mail the notice of default to the mortgagor or trustor. Existing law requires the notice to contain specified statements, including, but not limited to, those related to the mortgagor's or trustor's legal rights, as specified.

Until January 1, 2013, *and as applied to residential mortgage loans made on or before December 31, 2007, that are for owner-occupied residences*, this bill would, among other things, require, prior to the filing of any notice of default, a mortgagee, trustee, servicer, or beneficiary to conduct an in-person or, at the borrower's option, telephonic meeting with the borrower, as defined, to assess the borrower's financial situation, provide the borrower with a list of HUD-certified credit counselors in the borrower's geographic area, and explore options for the borrower to avoid foreclosure. The bill would also require the mortgagee, trustee, servicer, or beneficiary to offer, if feasible, other nonforeclosure options, as specified. The bill would preclude the filing of a notice of default until 30 days after that meeting, and would, upon that filing, require the mortgagee, trustee, servicer, or beneficiary to include a specified declaration regarding the meeting and the offering of alternative terms and options, which, upon a willful misstatement of material fact, may subject that person to a specified civil penalty subject to a civil action by the attorney general, district attorney, county counsel, or city attorney. If a notice of default had already been filed prior to the enactment of this act, the bill would instead require, prior to the notice of sale, an in-person *or, at the borrower's option, telephonic* meeting between the above-described parties. *Upon filing a notice of sale, the aforementioned declaration requirements and penalty provisions would also apply thereto.* The bill would also set forth procedures by which the borrower would be contacted prior to those in-person meetings, defined as "due diligence" on the part of the mortgagee, trustee, servicer, or beneficiary, which would require and include preliminary contact by electronic mail, first class mail, telephone, and certified mail, as specified. The bill would

also require specified mailings to the resident of a property that is the subject of a notice of sale.

Until January 1, 2013, this bill would also set forth specified penalties of up to \$1,000 a day for the failure by a legal owner to maintain vacant foreclosed residential property purchased at a foreclosure sale, as specified, and subject to a 14-day abatement period.

(3) Existing law governs the termination of tenancies and generally requires 30 days' notice of the termination thereof, except under specified circumstances. Existing law also establishes the criteria for determining when a tenant is guilty of unlawful detainer.

Until January 1, 2013, this bill would give a tenant or subtenant in possession of a rental housing unit that has been sold due to foreclosure, 60 days to remove himself or herself from the property, as specified.

(4) This bill would set forth specified findings and declarations and intent provisions with regard to the above, and would provide that its provisions are severable.

(5) This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:  
3 (a) California is facing an unprecedented threat to its state  
4 economy and local economies because of skyrocketing residential  
5 property foreclosure rates in California. Residential property  
6 foreclosures have increased almost 250 percent from September  
7 2006 to September 2007. More than 52,000 homes were lost to  
8 foreclosure in California in 2007, and another 172,000 households  
9 are in default and undergoing the foreclosure process. As many as  
10 foreclosures increased sevenfold from 2006 to 2007. In 2007, more  
11 than 84,375 homes were lost to foreclosure in California, and  
12 254,824 households went into default, the first step in the  
13 foreclosure process. As many as 400,000 subprime borrowers with  
14 over one hundred billion dollars (\$100,000,000,000) in mortgages,  
15 and hundreds of thousands of other residential property borrowers,  
16 could face foreclosure in the next five years.

1 (b) High foreclosure rates have adversely affected property  
2 values in California, and will have greater adverse consequences  
3 as foreclosures continue to rise. A recent United States Congress  
4 Joint Economic Committee report estimates that more than  
5 twenty-three billion six hundred million dollars (\$23,600,000,000)  
6 in property values will be lost over the next two years in California  
7 because of foreclosures.

8 (c) Over the next two years, it is estimated that California will  
9 lose nearly one hundred eleven million dollars (\$111,000,000) in  
10 tax revenues from forecasted foreclosures and the spillover effect  
11 on neighboring properties. More foreclosures mean less money  
12 for schools, public safety, and other key services.

13 (d) Under specified circumstances, mortgage lenders and  
14 servicers are authorized under their pooling and servicing  
15 agreements to modify mortgage loans when the modification  
16 maximizes the net present value of recoveries to the securitization  
17 trust and is in the best interest of investors; and that modification  
18 is in the best interest of investors when the borrower's ability and  
19 willingness to pay under the modified terms continues to produce  
20 revenue for the investor, whereas a default on the loan and  
21 foreclosure of the property causing significant financial loss to the  
22 investor is likely to occur without a restructuring or other  
23 modification of the loan.

24 (e) It is essential to the economic health of California for the  
25 state to ameliorate the deleterious effects on the state economy  
26 and local economies and the California housing market that will  
27 result from the continued foreclosures of residential properties in  
28 unprecedented numbers by modifying the foreclosure process to  
29 require mortgage lenders and servicers to contact their borrowers  
30 and explore mutually agreed upon options that could avoid  
31 foreclosure. These changes in the procedure for accessing the  
32 state's foreclosure process are essential to ensure that the process  
33 does not exacerbate the current crisis by adding more foreclosures  
34 to the glut of foreclosed properties already on the market where a  
35 foreclosure could have been avoided. Those additional foreclosures  
36 will further destabilize the housing market with significant,  
37 corresponding deleterious effects on the local and state economy.

38 (f) This act is necessary to avoid unnecessary foreclosures of  
39 residential properties and thereby provide stability to California's  
40 statewide and regional economies and housing market by requiring

1 early contact and communications between lenders and specified  
2 borrowers to improve the long-term affordability of those loans  
3 and by facilitating the modification or restructuring of loans that  
4 would likely default otherwise.

5 SEC. 2. Section 2923.5 is added to the Civil Code, to read:

6 2923.5. (a) Notwithstanding any other provision of law, 120,  
7 90, and 45 days prior to any projected ~~change~~ *increase of at least*  
8 *10 percent* in a borrower's mortgage payment amount, the  
9 mortgagee, trustee, servicer, or beneficiary shall mail notice to the  
10 borrower of all of the following:

11 (1) The current interest rate.

12 (2) The current monthly payment amount or the current periodic  
13 payment amount if the borrower is on a payment schedule other  
14 than monthly.

15 (3) The formula used by the mortgagee, trustee, servicer, or  
16 beneficiary to calculate the monthly or periodic payment amount,  
17 as provided in the borrower's mortgage loan contract. If the loan  
18 is an adjustable rate loan whose interest rate is calculated by adding  
19 a margin to the value of an index, the formula shall clearly identify  
20 the amount of the margin and the name of the index.

21 (4) The date on which the monthly or periodic payment amount  
22 is projected to change.

23 (5) A statement explaining that the mortgagee, trustee, servicer,  
24 or beneficiary will not know the modified interest rate or modified  
25 payment amount until at least 30 days prior to the projected date  
26 of change in payment amount.

27 (6) A statement explaining that the mortgagee, trustee, servicer,  
28 or beneficiary will notify the borrower about the actual change in  
29 payment amount at least 25 days prior to any change in payment  
30 amount.

31 (7) The difference between the borrower's current monthly or  
32 periodic payment and the illustrative monthly or periodic payment  
33 described in paragraph (8).

34 (8) An illustration of what the borrower's monthly or periodic  
35 payment amount and interest rate would be upon adjustment, if  
36 those amounts were calculated by the mortgagee, trustee, servicer,  
37 or beneficiary as of a date certain *using the formula as provided*  
38 *in the borrower's mortgage loan contract*. The date used by the  
39 mortgagee, trustee, servicer, or beneficiary shall not be any earlier  
40 than 30 days prior to the date the notice is sent. The illustration

1 shall be clearly denoted as such at the beginning of the example  
2 and set forth in no smaller than 12-point font. The date certain and  
3 the formula used to calculate the illustrative monthly or periodic  
4 payment amount and interest shall be specified in the notice. The  
5 illustration shall be accompanied by a statement that clearly states  
6 all of the following:

7 (A) The illustration is intended only as an aid to the borrower  
8 in evaluating whether he or she is likely to be able to afford the  
9 new monthly or periodic payment.

10 (B) The illustration is not an offer of credit terms.

11 (b) The notice described in subdivision (a) shall be provided by  
12 first-class mail and shall be in plain language ~~at a reading level no~~  
13 ~~higher than grade 6~~. The notice shall be provided in the language  
14 in which the mortgage was negotiated. If the mortgagee, trustee,  
15 servicer, or beneficiary is not the entity that originally negotiated  
16 the mortgage and does not know the language in which the  
17 mortgage was negotiated, the notice shall be provided in English  
18 and the languages described in Section 1632.

19 (c) This section shall only apply to loans secured by residential  
20 real property *made on or before December 31, 2007, that are for*  
21 *owner-occupied residences*.

22 (d) This section shall remain in effect only until January 1, 2013,  
23 and as of that date is repealed, unless a later enacted statute, that  
24 is enacted before January 1, 2013, deletes or extends that date.

25 SEC. 3. Section 2923.6 is added to the Civil Code, to read:

26 2923.6. (a) Prior to filing a notice of default pursuant to Section  
27 2924, the mortgagee, trustee, servicer, or beneficiary shall conduct  
28 an in-person meeting with the borrower to assess the borrower's  
29 financial situation, provide the borrower with a list of  
30 HUD-certified credit counselors in the borrower's geographic  
31 region, and explore options for the borrower to avoid foreclosure.  
32 At that meeting, the mortgagee, trustee, servicer, or beneficiary  
33 shall offer, where feasible, restructuring or other options, including  
34 forbearance or loan modification, consistent with the mortgagee's,  
35 trustee's, servicer's, or beneficiary's authority to mitigate losses,  
36 if that mitigation will serve the best interest of the investors because  
37 (1) the borrower is able and willing to pay under the modified  
38 terms, and (2) significant financial loss to the investors is likely  
39 to occur without a restructuring or other modification. Except as  
40 provided in subdivision (b), the mortgagee, trustee, servicer, or

1 beneficiary may not file a notice of default until 30 days after that  
2 in-person meeting.

3 (b) Upon filing a notice of default pursuant to Section 2924, a  
4 mortgagee, trustee, servicer, or beneficiary shall include a  
5 declaration that it has met with the borrower or tried with due  
6 diligence to contact the borrower for an in-person meeting. The  
7 mortgagee, trustee, servicer, or beneficiary shall also include within  
8 that declaration the terms of the existing loan and the restructuring  
9 options that were offered. If the mortgagee, trustee, servicer, or  
10 beneficiary willfully states as true any material fact he or she knows  
11 to be false, that person shall be subject to a civil penalty of up to  
12 ten thousand dollars (\$10,000). The attorney general, any district  
13 attorney, county counsel, or city attorney may bring a civil action  
14 to impose the penalty.

15 (c) (1) If a mortgagee, trustee, servicer, or beneficiary had  
16 already filed a notice of default prior to the enactment of this  
17 section, then the mortgagee, trustee, servicer, or beneficiary shall,  
18 prior to notice of the sale pursuant to Section 2924f, and with due  
19 diligence, contact the borrower and conduct an in-person meeting  
20 to assess the borrower's financial situation, provide the borrower  
21 with a list of HUD-certified credit counselors in the borrower's  
22 geographic area, and explore options for the borrower to avoid  
23 foreclosure. At that meeting, the mortgagee, trustee, servicer, or  
24 beneficiary shall offer, where feasible, restructuring or other  
25 options, including forbearance or loan modification, consistent  
26 with the mortgagee's, trustee's, servicer's, or beneficiary's  
27 authority to mitigate losses if that mitigation will serve the best  
28 interest of the investors because the borrower is able and willing  
29 to pay under the modified terms and significant financial loss to  
30 the investors is likely to occur without a restructuring or other  
31 modification.

32 (2) *Upon filing a notice of sale pursuant to Section 2924f, the*  
33 *mortgagee, trustee, servicer, or beneficiary described in paragraph*  
34 *(1) shall also comply with the declaration requirements of, and be*  
35 *subject to the penalties set forth in, subdivision (b).*

36 (d) All communications and negotiations pursuant to this section  
37 shall occur in the language in which the loan was originally  
38 negotiated. If the mortgagee, trustee, servicer, or beneficiary is not  
39 the entity that originally negotiated the terms and conditions of  
40 the loan and does not know the language used to negotiate the

1 loan, a notice shall be sent to the borrower in English and the  
2 languages described in Section 1632, stating the following: “Your  
3 home may be subject to foreclosure, which could result in you  
4 losing your home. Please contact us at (insert telephone number)  
5 to discuss possible options to avoid the foreclosure.”

6 (e) Any in-person meeting required pursuant to this section may  
7 instead, at the option of the borrower, occur telephonically.

8 (f) A mortgagee’s, trustee’s, servicer’s, or beneficiary’s loss  
9 mitigation personnel may participate by telephone at any in-person  
10 meeting required by this section.

11 (g) For purposes of this section, a “borrower” shall include a  
12 mortgagor or trustor.

13 (h) For purposes of this section, “due diligence” shall require  
14 and mean all of the following:

15 (1) A mortgagee, trustee, servicer, or beneficiary shall first  
16 contact a borrower by electronic mail and by sending a first-class  
17 letter. The first-class letter shall be sent to the address to which  
18 the property tax bill is sent and the electronic mail shall be sent to  
19 the electronic mail address on file if the mortgagee, trustee,  
20 servicer, or beneficiary has that *electronic mail* address.

21 (2) After the letter and electronic mail have been sent, the  
22 mortgagee, trustee, servicer, or beneficiary shall contact the  
23 borrower by telephone at least three times at different hours and  
24 on different days, including one call on a weekend. Telephone  
25 calls shall be made to the primary telephone number on file. This  
26 requirement is not necessary if a meeting has been arranged  
27 pursuant to the letter or electronic mail contact.

28 (3) If the borrower does not respond within two weeks after the  
29 last communication by the mortgagee, trustee, servicer, or  
30 beneficiary, and that party has met the electronic mail, first-class  
31 letter, and telephone call requirements, the mortgagee, trustee,  
32 servicer, or beneficiary shall then send a certified letter ~~with a~~  
33 ~~return receipt~~, *with return receipt requested*. The letter shall be  
34 sent to the address to which the property tax bill is sent. This  
35 requirement is not necessary if a meeting has been arranged  
36 pursuant to the letter, electronic mail, or telephone contact.

37 (4) If the borrower does not respond to the certified letter within  
38 30 days, the filing of a notice of default may commence.

39 (5) Written communications with the borrower shall include a  
40 notice providing that the borrower may wish to contact a

1 HUD-certified credit counselor to contact the mortgagee, trustee,  
2 servicer, or beneficiary on the borrower’s behalf.

3 (6) The mortgagee, trustee, servicer, or beneficiary shall provide  
4 a means for the borrower to contact it in a timely manner, including  
5 a toll-free telephone number that will be answered by a live person  
6 after no more than eight rings or a 24-hour toll-free telephone  
7 number that gives the borrower the option of reaching a live  
8 representative of the mortgagee, trustee, servicer, or beneficiary.

9 *(i) This section shall only apply to loans secured by residential*  
10 *real property made on or before December 31, 2007, that are for*  
11 *owner-occupied residences.*

12 ~~(i)~~

13 *(j) This section shall remain in effect only until January 1, 2013,*  
14 *and as of that date is repealed, unless a later enacted statute, that*  
15 *is enacted before January 1, 2013, deletes or extends that date.*

16 SEC. 4. Section 2924.8 is added to the Civil Code, to read:

17 2924.8. (a) Upon filing a notice of sale *pursuant to Section*  
18 *2924f*, a mortgagee, trustee, servicer, or beneficiary shall also mail,  
19 at the same time, a notice addressed to the “resident” of the  
20 property.

21 (b) The outside of the envelope shall prominently state in  
22 English and the languages described in Section 1632:  
23 “IMPORTANT: Information contained in this letter may affect  
24 your right to live in this property.”

25 (c) The notice shall state the following in the same languages  
26 required on the outside of the envelope: “Foreclosure process has  
27 begun on this property, which may affect your right to continue  
28 to live in this property. Twenty days or more after the date of this  
29 notice, this property may be sold at foreclosure. The new property  
30 owner may either give you a new lease or provide you with a  
31 60-day eviction notice. However, other laws may prohibit an  
32 eviction in this circumstance or provide you with a longer notice  
33 before eviction. You may wish to contact a lawyer or your local  
34 legal aid or credit counseling organization to discuss any rights  
35 you may have.”

36 *(d) This section shall only apply to loans secured by residential*  
37 *real property.*

38 ~~(d)~~

1 (e) This section shall remain in effect only until January 1, 2013,  
2 and as of that date is repealed, unless a later enacted statute, that  
3 is enacted before January 1, 2013, deletes or extends that date.

4 SEC. 5. Section 2929.3 is added to the Civil Code, to read:

5 2929.3. (a) Failure by a legal owner to maintain a vacant  
6 ~~foreclosed property~~ residential property purchased by that owner  
7 at a foreclosure sale shall constitute a nuisance and a violator shall  
8 be subject to civil fines and penalties of up to one thousand dollars  
9 (\$1,000) per day. *If an entity chooses to assess fines and penalties*  
10 *pursuant to this section, that entity shall send the legal owner, by*  
11 *first class mail, a notice of violation and opportunity to abate at*  
12 *least 14 days prior to assessing those fines or penalties.*

13 (b) For purposes of this section, “failure to maintain” includes  
14 failure to adequately care for the property, including, but not  
15 limited to, permitting excessive foliage growth that diminishes the  
16 value of surrounding properties, allowing trespassers or squatters,  
17 or permitting mosquito larva to grow in standing water.

18 (c) Fines and penalties collected pursuant to this section shall  
19 be directed to local nuisance abatement programs.

20 (d) These provisions shall not preempt any local ordinance that  
21 contains any greater standards or protections.

22 (e) *This section shall only apply to residential real property.*

23 ~~(e)~~

24 (f) This section shall remain in effect only until January 1, 2013,  
25 and as of that date is repealed, unless a later enacted statute, that  
26 is enacted before January 1, 2013, deletes or extends that date.

27 SEC. 6. Section 1161b is added to the Code of Civil Procedure,  
28 to read:

29 1161b. (a) Notwithstanding Section 1161a, a tenant or  
30 subtenant in possession of a rental housing unit that has been sold  
31 due to foreclosure shall be given 60 days’ written notice to quit  
32 pursuant to Section 1162 before the tenant or subtenant may be  
33 removed from the property as prescribed in this chapter.

34 (b) This section shall remain in effect only until January 1, 2013,  
35 and as of that date is repealed, unless a later enacted statute, that  
36 is enacted before January 1, 2013, deletes or extends that date.

37 SEC. 7. Nothing in this act is intended to affect any local  
38 just-cause eviction ordinance.

39 SEC. 8. The provisions of this act are severable. If any  
40 provision of this act or its application is held invalid, that invalidity

1 shall not affect other provisions or applications that can be given  
2 effect without the invalid provision or application.

3 SEC. 9. This act is an urgency statute necessary for the  
4 immediate preservation of the public peace, health, or safety within  
5 the meaning of Article IV of the Constitution and shall go into  
6 immediate effect. The facts constituting the necessity are:

7 In order to stabilize and protect the state and local economies  
8 and housing market at the earliest possible time, it is necessary for  
9 this act to take effect immediately.

O