

110TH CONGRESS
1ST SESSION

H. R. 3081

To amend the Truth in Lending Act to protect consumers from certain practices in connection with the origination of consumer credit transactions secured by the consumer's principal dwelling, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 18, 2007

Mr. ELLISON (for himself, Mr. CLAY, Mr. CLEAVER, Mr. JOHNSON of Georgia, Ms. LEE, Ms. MCCOLLUM of Minnesota, Mr. OBERSTAR, Mr. WALZ of Minnesota, and Ms. WOOLSEY) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Truth in Lending Act to protect consumers from certain practices in connection with the origination of consumer credit transactions secured by the consumer's principal dwelling, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the "Fairness for Home-
5 owners Act of 2007".

1 **SEC. 2. ORIGINATIONS OF CONSUMER CREDIT TRANS-**
2 **ACTIONS SECURED BY THE CONSUMER'S**
3 **PRINCIPAL DWELLING.**

4 (a) IN GENERAL.—The Truth in Lending Act (15
5 U.S.C. 1601 et seq.) is amended by inserting after section
6 129 the following new section:

7 **“§ 129A. Originations of consumer credit transactions**
8 **secured by the consumer’s principal**
9 **dwelling**

10 “(a) DEFINITIONS.—For purposes of this section, the
11 following definitions shall apply:

12 “(1) FULLY INDEXED RATE.—The term ‘fully
13 indexed rate’ equals the index rate prevailing at the
14 time a consumer credit transaction secured by a con-
15 sumer’s principal dwelling is originated, plus the
16 margin that will apply after the expiration of an in-
17 troductory interest rate.

18 “(2) MORTGAGE BROKER.—The term ‘mortgage
19 broker’ means any person who is defined as a mort-
20 gage broker under applicable State law.

21 “(b) REQUIREMENTS FOR ORIGINATORS.—

22 “(1) ABILITY TO PAY.—

23 “(A) IN GENERAL.—No creditor or mort-
24 gage broker may make, provide, or arrange for
25 any consumer credit transaction secured by a
26 consumer’s principal dwelling without verifying

1 the consumer's reasonable ability to pay the
2 scheduled payments of the following, as applica-
3 ble: principal; interest; real estate taxes; home-
4 owner's insurance, assessments, and mortgage
5 insurance premiums.

6 “(B) VARIABLE INTEREST RATE.—In the
7 case of any consumer credit transaction secured
8 by a consumer's principal dwelling for which
9 the applicable annual percentage rate may vary
10 over the life of the credit, the reasonable ability
11 to pay shall be determined, for purposes of this
12 paragraph, on the basis of a fully indexed rate
13 plus 200 basis points and a repayment schedule
14 which achieves full amortization over the life of
15 the extension of credit.

16 “(C) VERIFICATION OF CONSUMER INCOME
17 AND FINANCIAL RESOURCES.—In the case of
18 any consumer credit transaction secured by a
19 consumer's principal dwelling, the income and
20 financial resources of the consumer shall be
21 verified for purposes of this paragraph by tax
22 returns, payroll receipts, bank records, or other
23 similarly reliable documents.

24 “(D) OTHER CRITERIA.—No provision of
25 this paragraph shall be construed as prohibiting

1 reliance on criteria other than a consumer's in-
2 come and financial resources to establish the
3 reasonable ability of the consumer to repay any
4 consumer credit transaction secured by the con-
5 sumer's principal dwelling, to the extent such
6 other criteria are also verified through reason-
7 ably reliable methods and documentation.

8 “(E) CONSUMER STATEMENT IS INSUFFI-
9 CIENT PROOF.—A statement by a consumer of
10 the consumer's income or financial resources
11 shall not be sufficient to establish the existence
12 of any income or financial resources when
13 verifying the reasonable ability of the consumer
14 to repay any consumer credit transaction se-
15 cured by the consumer's principal dwelling, for
16 purposes of this paragraph.

17 “(2) PROHIBITION ON STEERING.—No creditor
18 or mortgage broker may make, provide, or arrange
19 for any consumer credit transaction secured by a
20 consumer's principal dwelling that is of a lower in-
21 vestment grade if—

22 “(A) the consumer's credit score; or

23 “(B) comparable underwriting data, in any
24 case in which the creditor or mortgage broker

1 does not utilize credit scoring or a credit score
2 for the consumer is unavailable,
3 indicates that the borrower may qualify for a con-
4 sumer credit transaction, available from or through
5 the creditor or mortgage broker, that is of a higher
6 investment grade.

7 “(3) PROHIBITION ON PREPAYMENT PENALTIES
8 FOR ARMS.—

9 “(A) IN GENERAL.—In the case of any
10 consumer credit transaction secured by a con-
11 sumer’s principal dwelling that provides for
12 variable rates of interest on the credit extended
13 under the transaction, the transaction may not
14 contain terms under which a consumer must
15 pay a prepayment penalty for paying all or part
16 of the principal before the date on which the
17 principal is due.

18 “(B) EXCLUSION FOR JUMBO MORT-
19 GAGES.—Subparagraph (A) shall not apply to
20 any consumer credit transaction secured by a
21 consumer’s principal dwelling the principal
22 amount (as defined in subsection (c)(2)) of
23 which exceeds the maximum dollar amount limi-
24 tation (for a residence of the applicable size) on
25 the amount of the principal obligation of a

1 mortgage for a 1- to 4-family residence that
2 may be purchased by the Federal Home Loan
3 Mortgage Corporation, as then in effect pursu-
4 ant to section 305(a)(2) of the Federal Home
5 Loan Mortgage Corporation Act.

6 “(c) LIMITATION ON FINANCED POINTS, CHARGES,
7 AND FEES.—

8 “(1) IN GENERAL.—No creditor or mortgage
9 broker may, in connection with any consumer credit
10 transaction secured by the consumer’s principal
11 dwelling, include in the principal amount of such
12 transaction any portion of any qualified finance
13 charge in excess of the amount which is equal to 5
14 percent of the principal amount of the transaction.

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

17 “(A) QUALIFIED FINANCE CHARGE.—The
18 term ‘qualified finance charge’ means the sum
19 of—

20 “(i) the finance charge as determined
21 under section 106, minus any interest and
22 time price differential; and

23 “(ii) all compensation paid to a mort-
24 gage broker from any source in connection
25 with this transaction.

1 “(B) PRINCIPAL AMOUNT.—The term
2 ‘principal amount’ means—

3 “(i) in the case of any consumer cred-
4 it transaction under an open end credit
5 plan secured by the consumer’s principal
6 dwelling, the maximum amount of credit
7 that may be extended under the terms of
8 such plan as determined without taking
9 into account any amount included in deter-
10 mining the finance charge under section
11 106; and

12 “(ii) in the case of any other con-
13 sumer credit transaction secured by a con-
14 sumer’s principal dwelling, the amount fi-
15 nanced (as defined in section 138(a)(2)).

16 “(3) PROHIBITION ON EXCESSIVE FINANCE
17 CHARGES.—No creditor or mortgage broker may, in
18 connection with any consumer credit transaction se-
19 cured by the consumer’s principal dwelling, impose
20 or receive any amount included in determining the
21 qualified finance charge for such transaction that ex-
22 ceeds the amount which is equal to 5 percent of the
23 principal amount of the transaction.

24 “(4) EXCEPTION.—This subsection shall not
25 apply to any consumer credit transaction secured by

1 the consumer's principal dwelling that is ensured or
2 guaranteed by the Secretary of Housing and Urban
3 Development, the Secretary of Veterans Affairs, or
4 the Farmers Home Administration.

5 “(d) MORTGAGE BROKER DUTIES OF AGENCY.—

6 “(1) IN GENERAL.—Any mortgage broker act-
7 ing to obtain or arrange for any consumer credit
8 transaction secured by the consumer's principal
9 dwelling shall be considered to have an agency rela-
10 tionship with the consumer in all cases by operation
11 of law and shall comply with the following duties:

12 “(A) Mortgage brokers shall act in the
13 consumer's best interest and in the utmost good
14 faith toward each consumer and shall not com-
15 promise a consumer's right or interest in favor
16 of another's right or interest, including a right
17 or interest of the mortgage broker.

18 “(B) A mortgage broker shall not accept,
19 give, or charge any undisclosed compensation or
20 realize any undisclosed remuneration, either
21 through direct or indirect means, that inures to
22 the benefit of the mortgage broker on an ex-
23 penditure made for the consumer.

24 “(C) Mortgage brokers shall carry out all
25 lawful instructions given by the consumer.

1 “(D) Mortgage brokers shall disclose to
2 consumers all material facts of which the mort-
3 gage broker has knowledge which might reason-
4 ably affect the consumer’s rights, interests, or
5 ability to receive the consumer’s intended ben-
6 efit from the consumer credit transaction, but
7 not facts which are reasonably susceptible to
8 the knowledge of the consumer.

9 “(E) Mortgage brokers shall use reason-
10 able care in performing duties.

11 “(F) Mortgage brokers shall account to a
12 consumer for all the consumer’s money and
13 property received as agent.

14 “(2) SCOPE.—The duty of agency between
15 mortgage broker and consumer applies when the
16 mortgage broker is acting in the capacity of mort-
17 gage broker providing mortgage brokerage services
18 with respect to any consumer credit transaction se-
19 cured by the consumer’s principal dwelling for which
20 the broker is not the creditor.

21 “(3) RULES OF CONSTRUCTION.—

22 “(A) FEES FOR SERVICES RENDERED.—
23 No provision of this subsection shall be con-
24 strued as prohibiting a mortgage broker from
25 contracting for or collecting a fee for services

1 rendered which had been disclosed to the con-
2 sumer in advance of the provision of such serv-
3 ices.

4 “(B) DUTY OF BROKER.—No provision of
5 this subsection shall be construed as requiring
6 a mortgage broker—

7 “(i) to obtain or arrange for any con-
8 sumer credit transaction secured by the
9 consumer’s principal dwelling on behalf of
10 a consumer that contains terms or condi-
11 tions not available to the mortgage broker
12 in the mortgage broker’s usual course of
13 business; or

14 “(ii) to obtain or arrange for any con-
15 sumer credit transaction secured by the
16 consumer’s principal dwelling from a cred-
17 itor with whom the mortgage broker does
18 not have a business relationship.

19 “(e) INDEPENDENT VERIFICATION OF CONSUMER
20 COUNSELING BEFORE REFINANCING SPECIAL MORT-
21 GAGES.—

22 “(1) IN GENERAL.—No creditor or mortgage
23 broker may make, provide, or arrange for any con-
24 sumer credit transaction secured by the consumer’s
25 principal dwelling all or a portion of the proceeds of

1 which are used to fully or partially pay off a special
2 mortgage unless the borrower has obtained a written
3 certification from an authorized independent loan
4 counselor that the borrower has received counseling
5 on the advisability of the transaction.

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

8 “(A) SPECIAL MORTGAGE.—The term ‘spe-
9 cial mortgage’ means any consumer credit
10 transaction secured by the consumer’s principal
11 dwelling that was originated, subsidized, fund-
12 ed, or guaranteed by or through a State, tribal,
13 or local government, or nonprofit organization,
14 that bears 1 or more of the following non-
15 standard payment terms which substantially
16 benefit the consumer:

17 “(i) Payments vary with income.

18 “(ii) Payments of principal or interest
19 are not required or can be deferred under
20 specified conditions.

21 “(iii) Principal or interest is forgiv-
22 able under specified conditions.

23 “(iv) Either no interest or an annual
24 interest rate of 2 percent or less is charged
25 in connection with the loan.

1 “(B) AUTHORIZED LOAN COUNSELOR.—
2 The term ‘authorized independent loan coun-
3 selor’ means any nonprofit, third-party indi-
4 vidual or organization providing homebuyer
5 education programs, foreclosure prevention
6 services, mortgage loan counseling, or credit
7 counseling that is certified by the Secretary of
8 Housing and Urban Development, or certified
9 by any State housing agency or nonprofit orga-
10 nization designated by such Secretary, for such
11 purposes.

12 “(f) MINIMUM FINANCIAL REQUIREMENTS FOR
13 MORTGAGE BROKERS.—No mortgage broker may obtain
14 or arrange for any consumer credit transaction secured
15 by the consumer’s principal dwelling unless at all times
16 the mortgage broker—

17 “(1) maintains a minimum net worth, net of in-
18 tangibles, of at least \$500,000, as determined in ac-
19 cordance with generally accepted accounting prin-
20 ciples; or

21 “(2) maintains a surety bond or irrevocable let-
22 ter of credit in the amount of \$50,000.

23 “(g) ENFORCEMENT.—For purposes of providing a
24 cause of action for any failure by a mortgage broker to
25 comply with any requirement imposed under this section,

1 section 130(a) shall be applied with respect to any such
2 failure—

3 “(1) by substituting ‘mortgage broker’ for
4 ‘creditor’ each place such term appears in such sec-
5 tion; and

6 “(2) by treating all qualified finance charges
7 (as defined in subsection (c)(2)(A)) incurred in the
8 origination of any consumer credit transaction se-
9 cured by the consumer’s principal dwelling as actual
10 damages sustained by the consumer as a result of
11 the failure.

12 “(h) EXCLUSION OF REVERSE MORTGAGES.—This
13 section shall not apply with respect to any consumer mort-
14 gage transaction that constitutes a reverse mortgage.”.

15 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
16 The Truth in Lending Act is amended—

17 (1) in section 103 (u) (15 U.S.C. 1602(u)), by
18 striking “and the disclosures required by section
19 129(a)” and inserting “and the provisions of section
20 129 and 129A”; and

21 (2) in section 130 (15 U.S.C. 1640), by insert-
22 ing “or 129A” after section 129 each place such
23 term appears.

24 (c) CLERICAL AMENDMENT.—The table of sections
25 for chapter 2 of the Truth in Lending Act is amended

- 1 by inserting after the item relating to section 129 the fol-
- 2 lowing new item:

“129A. Originations of consumer credit transactions secured by the consumer’s principal dwelling.”.

