

110TH CONGRESS
1ST SESSION

S. _____

To amend the Truth in Lending Act, to provide for enhanced disclosures to consumers and enhanced regulation of mortgage brokers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mrs. CLINTON introduced the following bill; which was read twice and referred to the Committee on _____

A BILL

To amend the Truth in Lending Act, to provide for enhanced disclosures to consumers and enhanced regulation of mortgage brokers, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “American Home Ownership Preservation Act of 2007”.

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

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 2. Enhanced residential mortgage disclosure requirements.
- Sec. 3. National registry for mortgage brokers.

- Sec. 4. Elimination of prepayment penalties for all mortgage products.
- Sec. 5. Foreclosure prevention and mortgage refinancing fund.
- Sec. 6. Affordable housing trust fund support grant program.
- Sec. 7. Foreclosure prevention goal for government-sponsored enterprises.
- Sec. 8. Mortgage fraud enforcement and prosecution.

1 **SEC. 2. DEFINITIONS.**

2 For purposes of this Act, the following definitions
3 shall apply:

4 (1) FEDERAL BANKING AGENCIES.—The term
5 “Federal banking agencies” has the same meaning
6 as in section 3 of the Federal Deposit Insurance Act
7 (12 U.S.C. 1813).

8 (2) FFIEC.—The term “FFIEC” means Fed-
9 eral Financial Institutions Examination Council.

10 (3) HOME MORTGAGE LOAN.—The term “home
11 mortgage loan” means any consumer credit trans-
12 action in which a security interest, including any
13 such interest arising by operation of law, is or will
14 be retained or acquired in any real property located
15 within the United States which is or, upon the com-
16 pletion of the transaction, will be used as the prin-
17 ciple residence of the consumer.

18 (4) MORTGAGE BROKER.—The term “mortgage
19 broker”—

20 (A) means any person who, for compensa-
21 tion or in anticipation of compensation, pro-
22 vides mortgage brokerage services in connection

1 with home mortgage loans, with respect to
2 which, the person is not the creditor; and

3 (B) includes any loan officer that provides
4 such services.

5 (5) MORTGAGE BROKERAGE SERVICES.—The
6 term “mortgage brokerage services” means—

7 (A) arranging or negotiating, or attempt-
8 ing to arrange or negotiate, home mortgage
9 loans or commitments for such loans;

10 (B) accepting or offering to accept an ap-
11 plication for a home mortgage loan;

12 (C) soliciting or offering to solicit a home
13 mortgage loan;

14 (D) referring consumer applicants or pro-
15 spective applicants for home mortgage loans to
16 creditors;

17 (E) selecting or offering to select, on be-
18 half of consumers, creditors to whom requests
19 for an extension of a home mortgage loan may
20 be made;

21 (F) negotiating the terms or conditions of
22 a home mortgage loan;

23 (G) issuing home mortgage loan commit-
24 ments or interest rate guarantee agreements to
25 borrowers; or

1 (H) engaging in tablefunding of home
2 mortgage loans, whether done through contact
3 by telephone, by electronic means, by mail, or
4 in person with the borrower or potential bor-
5 rower.

6 (6) MORTGAGE ORIGINATOR.—The term “mort-
7 gage originator” means any creditor or other person,
8 including a mortgage broker, and any employee or
9 agent thereof, who, for compensation or in anticipa-
10 tion of compensation, engages either directly or indi-
11 rectly in—

12 (A) the acceptance of applications for
13 home mortgage loans;

14 (B) solicitation of home mortgage loans on
15 behalf of borrowers;

16 (C) negotiation of terms or conditions of
17 home mortgage loans on behalf of borrowers or
18 lenders; or

19 (D) negotiation of sales of existing home
20 mortgage loans to institutional or noninstitu-
21 tional lenders.

22 (7) SECRETARY.—The term “Secretary” means
23 the Secretary of Housing and Urban Development.

1 **SEC. 3. ENHANCED RESIDENTIAL MORTGAGE DISCLOSURE**
2 **REQUIREMENTS.**

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

6 **“SEC. 129A. RESPONSIBILITIES OF MORTGAGE BROKERS.**

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

9 “(1) FEDERAL BANKING AGENCIES.—The term
10 ‘Federal banking agencies’ has the same meaning as
11 in section 3 of the Federal Deposit Insurance Act
12 (12 U.S.C. 1813).

13 “(2) FFIEC.—The term ‘FFIEC’ means Fed-
14 eral Financial Institutions Examination Council.

15 “(3) HOME MORTGAGE LOAN.—The term ‘home
16 mortgage loan’ means any consumer credit trans-
17 action in which a security interest, including any
18 such interest arising by operation of law, is or will
19 be retained or acquired in any real property located
20 within the United States which is or, upon the com-
21 pletion of the transaction, will be used as the prin-
22 ciple residence of the consumer.

23 “(4) MORTGAGE BROKER.—The term ‘mortgage
24 broker’—

25 “(A) means any person who, for compensa-
26 tion or in anticipation of compensation, pro-

1 vides mortgage brokerage services in connection
2 with home mortgage loans, with respect to
3 which, the person is not the creditor; and

4 “(B) includes any loan officer that pro-
5 vides such services.

6 “(5) MORTGAGE BROKERAGE SERVICES.—The
7 term ‘mortgage brokerage services’ means—

8 “(A) arranging or negotiating, or attempt-
9 ing to arrange or negotiate, home mortgage
10 loans or commitments for such loans;

11 “(B) accepting or offering to accept an ap-
12 plication for a home mortgage loan;

13 “(C) soliciting or offering to solicit a home
14 mortgage loan;

15 “(D) referring consumer applicants or pro-
16 spective applicants for home mortgage loans to
17 creditors;

18 “(E) selecting or offering to select, on be-
19 half of consumers, creditors to whom requests
20 for an extension of a home mortgage loan may
21 be made;

22 “(F) negotiating the terms or conditions of
23 a home mortgage loan;

1 “(G) issuing home mortgage loan commit-
2 ments or interest rate guarantee agreements to
3 borrowers; and

4 “(H) engaging in tablefunding of home
5 mortgage loans, whether done through contact
6 by telephone, by electronic means, by mail, or
7 in person with the borrower or potential bor-
8 rower.

9 “(6) MORTGAGE ORIGINATOR.—The term
10 ‘mortgage originator’ means any creditor or other
11 person, including a mortgage broker, and any em-
12 ployee or agent thereof, who, for compensation or in
13 anticipation of compensation, engages either directly
14 or indirectly in—

15 “(A) the acceptance of applications for
16 home mortgage loans;

17 “(B) solicitation of home mortgage loans
18 on behalf of borrowers;

19 “(C) negotiation of terms or conditions of
20 home mortgage loans on behalf of borrowers or
21 lenders; or

22 “(D) negotiation of sales of existing home
23 mortgage loans to institutional or noninstitu-
24 tional lenders.

1 “(7) SECRETARY.—The term ‘Secretary’ means
2 the Secretary of Housing and Urban Development.

3 “(b) FULL DISCLOSURE OF MORTGAGE BROKER AND
4 ORIGINATOR COMPENSATION.—

5 “(1) IN GENERAL.—Upon entering into mort-
6 gage brokerage services, each mortgage broker or
7 mortgage originator shall—

8 “(A) establish a fee for mortgage broker-
9 age services performed for a borrower, and shall
10 disclose that fee to the borrower; and

11 “(B) disclose to the consumer, in an easy
12 to understand format, at a minimum—

13 “(i) any payment to the mortgage
14 broker or mortgage originator from the
15 home mortgage loan lender or any other
16 party connected to the transaction;

17 “(ii) a clear demonstration of how the
18 compensation of the broker is affected by
19 the mortgage rate and fees to be paid by
20 the borrower; and

21 “(iii) the total fee and any associated
22 payment arrangement.

23 “(2) BORROWER ACKNOWLEDGMENT.—The
24 borrower shall acknowledge confirmation of fees dis-
25 closed under paragraph (1), either through written

1 or electronic communication, before mortgage bro-
2 kerage services may be provided with respect to that
3 borrower.

4 “(c) COMPREHENSIVE UNDERWRITING ASSESS-
5 MENT.—Any mortgage originator or lender that has pri-
6 mary responsibility for conducting an underwriting assess-
7 ment on a home mortgage loan for a borrower shall in-
8 clude the ability of the borrower to repay other costs, such
9 as property taxes, property fees, adjustments in interest
10 rates, and property insurance.

11 “(d) FULL DISCLOSURE OF MORTGAGE BROKER RE-
12 LATIONSHIP.—

13 “(1) IN GENERAL.—Each mortgage broker
14 shall clearly disclose to each potential borrower the
15 relationship it has to the borrower.

16 “(2) CONTENTS.—The disclosure required by
17 paragraph (1) shall require the broker to advise the
18 borrower—

19 “(A) of whether the broker is or is not act-
20 ing as an agent of the borrower;

21 “(B) if not an agent of the borrower, that
22 the broker does not represent the interests of
23 the borrower and is not legally responsible for
24 getting the borrower the best rate or product
25 for their home mortgage loan; and

1 “(C) if an agent of the borrower, that the
2 broker has a duty to fully and fairly represent
3 the interests of the borrower in obtaining a
4 home mortgage loan product.”.

5 (b) RULEMAKING.—Not later than 180 days after the
6 date of enactment of this Act, the Federal banking agen-
7 cies, through the FFIEC, in conjunction with the Sec-
8 retary, shall issue regulations to carry out section 129A
9 of the Truth in Lending Act, as added by this Act, after
10 a public comment period of not less than 60 days.

11 **SEC. 4. NATIONAL REGISTRY FOR MORTGAGE BROKERS.**

12 (a) MORTGAGE BROKER REGISTRY.—

13 (1) IN GENERAL.—Not later than 240 days
14 after the date of enactment of this Act, the Federal
15 banking agencies, through the FFIEC, in consulta-
16 tion with the Secretary, the Attorney General of the
17 United States, the Conference of State Bank Super-
18 visors, the American Association of Residential
19 Mortgage Regulators, and the National Association
20 of State Attorneys General, shall establish a nation-
21 wide registry and database system for all mortgage
22 brokers.

23 (2) CONTENT.—The registry and database re-
24 quired by this section shall be maintained by the

1 FFIEC, and shall contain the names of all mortgage
2 brokers in the United States.

3 (3) PUBLIC AVAILABILITY.—The registry re-
4 quired by this section shall be made available to the
5 public, and shall be readily and easily searchable
6 electronically and through an Internet portal.

7 (b) REQUIRED REGISTRATION.—It shall be unlawful
8 for any person in the United States to engage in the provi-
9 sion of mortgage brokerage services, unless that person
10 has registered in the nationwide database established
11 under this section.

12 (c) RULEMAKING.—

13 (1) IN GENERAL.—Not later than 180 days
14 after the date of enactment of this Act, the FFIEC,
15 after a public comment period of not less than 60
16 days—

17 (A) shall issue final regulations to carry
18 out this section; and

19 (B) rules for compliance with the registry.

20 (2) CONTENT.—At a minimum, the regulations
21 required by paragraph (1) shall require that individ-
22 uals registering with the database furnish informa-
23 tion concerning their identity, including—

24 (A) full name, current address, and con-
25 tact information;

1 (B) fingerprints, for submission to the
2 Federal Bureau of Investigation, and any gov-
3 ernmental agency or entity authorized to receive
4 such information, for a State and national
5 criminal history background check; and

6 (C) professional history experience, includ-
7 ing authorization for the registry to obtain—

8 (i) an independent credit report ob-
9 tained from a consumer reporting agency
10 described in section 603(p) of the Fair
11 Credit Reporting Act; and

12 (ii) information related to any admin-
13 istrative, civil, or criminal findings by any
14 governmental jurisdiction.

15 (d) **AUTHORITY TO MODIFY.**—The FFIEC may
16 make amendments to the regulations required by this sec-
17 tion in order to improve the efficiency of the registry or
18 compliance with the requirements of this section.

19 (e) **NO PREEMPTION.**—Nothing in this section shall
20 be construed as preempting any State licensing or reg-
21 istration requirement.

22 (f) **AUTHORIZATION OF APPROPRIATIONS.**—There
23 are authorized to be appropriated to the FFIEC, such
24 funds as may be necessary to carry out this section.

1 **SEC. 5. ELIMINATION OF PREPAYMENT PENALTIES FOR**
2 **ALL MORTGAGE PRODUCTS.**

3 Section 129A of the Truth in Lending Act, as added
4 by this Act, is amended by adding at the end the following:

5 “(e) **LIMITATION ON TERMS.**—Notwithstanding any
6 other provision of law, a home mortgage loan may not con-
7 tain terms under which a consumer must pay a prepay-
8 ment penalty for paying all or part of the principal before
9 the date on which the principal is due under the terms
10 of the loan agreement.”.

11 **SEC. 6. FORECLOSURE PREVENTION AND MORTGAGE REFI-**
12 **NANCING FUND.**

13 (a) **IN GENERAL.**—The Secretary of the Department
14 of Housing and Urban Development (hereafter in this Act
15 referred to as the “Secretary”) shall make grants to State
16 governments and tribal organizations (as defined in sec-
17 tion 4(l) of the Indian Self-Determination and Education
18 Assistance Act (25 U.S.C. 450b(l))) to assist State pro-
19 grams established for the purpose of foreclosure mitiga-
20 tion, and to encourage the refinancing of distressed or at
21 risk mortgages.

22 (b) **PREFERENCE.**—In providing grants under this
23 section, the Secretary shall give preference to States and
24 tribal organizations that have created partnerships
25 through their State housing or mortgage finance agencies
26 and government-sponsored enterprises, private mortgage

1 lenders, nonprofit community organizations, and mortgage
2 insurance companies, to create stable refinancing options
3 for at risk mortgages.

4 (c) REGULATIONS.—Not later than 180 days after
5 the date of enactment of this Act, the Secretary shall issue
6 regulations, after a public comment period of not less than
7 60 days, prescribing the criteria for the selection of grant
8 recipients under this section, and shall update such regula-
9 tions as necessary.

10 (d) AUTHORIZATION OF FUNDS.—There are author-
11 ized to be appropriated to the Secretary, not more than
12 \$1,000,000,000 to make grants under this section.

13 **SEC. 7. AFFORDABLE HOUSING TRUST FUND SUPPORT**
14 **GRANT PROGRAM.**

15 (a) IN GENERAL.—The Secretary shall make grants
16 to State, county, municipal governments, and tribal orga-
17 nizations (as defined in section 4(l) of the Indian Self-
18 Determination and Education Assistance Act (25 U.S.C.
19 450b(l))) to assist housing trust funds that support low-
20 and moderate-income housing opportunities.

21 (b) PREFERENCE.—In providing grants under this
22 section, the Secretary shall give preference to States,
23 counties, municipalities, and tribal organizations with
24 housing trust funds that can demonstrate—

25 (1) that the fund—

1 (A) serves a purpose not already addressed
2 by existing housing agencies and programs;

3 (B) is established under an agency that al-
4 ready handles Federal housing programs;

5 (C) has nonlapsing or a dedicated source
6 of income; and

7 (D) has some type of oversight board; and

8 (2) any other factors that the Secretary deter-
9 mines to be appropriate.

10 (c) CRITERIA.—Not later than 180 days after the
11 date of enactment of this Act, the Secretary shall issue
12 regulations, after a public comment period of not less than
13 60 days, prescribing the criteria for the selection of grant
14 recipients under this section, and shall update such regula-
15 tions as necessary.

16 (d) AUTHORIZATION OF FUNDS.—There are author-
17 ized to be appropriated to the Secretary not more than
18 \$1,000,000,000 to make grants under this section.

19 **SEC. 8. FORECLOSURE PREVENTION GOAL FOR GOVERN-**
20 **MENT-SPONSORED ENTERPRISES.**

21 (a) IN GENERAL.—The Federal Housing Enterprises
22 Financial Safety and Soundness Act of 1992 (12 U.S.C.
23 4501 et seq.) is amended—

1 (1) by redesignating sections 1336 through
2 1338 as sections 1337 through 1139, respectively;
3 and

4 (2) by inserting after section 1335 the fol-
5 lowing:

6 **“SEC. 1336. FORECLOSURE PROTECTION.**

7 “(a) IN GENERAL.—The Secretary shall establish an
8 annual goal for each enterprise to identify and assist
9 homeowners at risk of default or foreclosure on their mort-
10 gage, but would be able to stabilize their financial situa-
11 tion if their mortgage was recast or refinanced into more
12 traditional mortgage terms, such as a fixed rate 30- or
13 40-year mortgage. This goal shall not be enforceable under
14 the provisions of this title or any provision of the Federal
15 National Mortgage Association Charter Act or the Federal
16 Home Loan Mortgage Corporation Act.

17 “(b) FACTORS TO BE CONSIDERED.—In meeting the
18 goal established under this section, each enterprise may—

19 “(1) enter into partnerships and develop rela-
20 tionships with nonprofit and for-profit organizations
21 and State, county, tribal, and municipal agencies,
22 programs, or initiatives that provide foreclosure
23 counseling, foreclosure mitigation and abatement,
24 and mortgage refinancing services to at-risk home-

1 owners to help identify borrowers that could benefit
2 from mortgage refinancing;

3 “(2) identify communities in which foreclosure
4 risk is disproportionately high, including minority
5 communities that receive higher cost loans at a dis-
6 proportionate rate;

7 “(3) work to develop and offer refinancing
8 products for borrowers that have been identified as
9 at-risk, but can be prevented from entering fore-
10 closure with a recast or refinanced mortgage; and

11 “(4) establish a dialogue with private lenders to
12 identify opportunities to encourage servicing and
13 workout agreements for at-risk borrowers.”.

14 (b) CONFORMING AMENDMENTS.—Title XIII of the
15 Federal Housing Enterprises Financial Safety and Sound-
16 ness Act of 1992 (12 U.S.C. 4501 et seq.) is amended—

17 (1) by striking “section 1336” each place that
18 term appears and inserting “section 1337”;

19 (2) by striking “1336” each place that term ap-
20 pears and inserting “1337”;

21 (3) in each of sections 1341, and 1345(a)(3),
22 by striking “1337” and inserting “section 1338”;
23 and

1 (4) in each of subsections (a)(3)(B) and (b) of
2 section 1371 (12 U.S.C. 4631), by striking “1337”
3 and inserting “1338”.

4 **SEC. 9. MORTGAGE FRAUD ENFORCEMENT AND PROSECU-**
5 **TION.**

6 For each of fiscal years 2008 through 2012, there
7 are authorized to be appropriated to the Attorney General
8 of the United States, a total of \$20,000,000, to support
9 the employment of additional agents of the Federal Bu-
10 reau of Investigation, and additional prosecutors at the
11 Department of Justice to coordinate the prosecution of
12 mortgage fraud efforts with the offices of the United
13 States Attorneys.