

110TH CONGRESS  
1ST SESSION

# S. 2114

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

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## IN THE SENATE OF THE UNITED STATES

SEPTEMBER 27, 2007

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

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## 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. 3. Enhanced residential mortgage disclosure requirements.
- Sec. 4. National registry for mortgage brokers.

- Sec. 5. Elimination of prepayment penalties for all mortgage products.  
 Sec. 6. Foreclosure prevention and mortgage refinancing fund.  
 Sec. 7. Affordable housing trust fund support grant program.  
 Sec. 8. Foreclosure prevention goal for government-sponsored enterprises.  
 Sec. 9. 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), by  
22 striking “1337” and inserting “section 1338”; and

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

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.

○