

HR 3915
Mortgage Reform and Anti-Predatory Lending Act of 2007
Passed the House of Representatives on November 15, 2007
By a Vote of 291-127

Title I - Residential Mortgage Loan Origination

Subtitle A establishes a licensing system for residential mortgage loan originators.

Section 101 encourages the states to pass laws authorizing the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators to establish a mortgage licensing system and registry for the mortgage industry. The registry is intended to enhance consumer protection and support anti-fraud measures and allow consumers to find information about the loan originators they use to process their mortgage applications.

Section 102 defines the terms used in this subtitle. In addition to terms cross referenced from other sections, this section defines several new terms. A “loan originator” is an individual who takes, assists a consumer in obtaining, or offers or negotiates terms of a residential mortgage loan, but does not include individuals who provide administrative, clerical, support, or real estate brokerage services. This section also defines the “nationwide mortgage licensing system and registry.”

The most important definitions in the section are “state-licensed loan originator” (section 102(9)) and “registered loan originator,” (section 102(6)). These definitions govern the licensing of mortgage originators associated with mortgage brokers and also mortgage originators associated with insured depository institutions and their subsidiaries. This distinction between employees of insured depositories and their subsidiaries on the one hand and mortgage brokers on the other hand spares bank employees from the more onerous licensing and regulatory burdens placed on mortgage brokers. The inclusion of subsidiaries in the definition of insured depository institutions preserves the recent **Watters v. Wachovia** decision from the U.S. Supreme Court.

Section 103 requires individuals engaged in the business of loan origination to obtain and maintain a registration as a registered loan originator (bank and bank subsidiary employees) or a license and registration as a state-licensed loan originator (mortgage broker employees). The bill does not require an institution to be licensed or registered. This section also makes it clear that independent contractors will be subject to this requirement.

Section 104 requires the states to adopt laws implementing the licensing and registration requirements outlined in the section for state-licensed loan originators. This section applies to mortgage brokers and does NOT apply to the employees of insured depository institutions and their subsidiaries. The section details the background checks

required, fingerprinting, education, testing and competence standards applicable to mortgage brokers.

Section 105 outlines the process for state license renewals for state-licensed loan originators/mortgage brokers. These continuing education requirements do NOT apply to the employees of insured depository institutions and their subsidiaries.

Section 106 defines the system for registering the **employees** of insured depository institutions and their subsidiaries. Banks and their subsidiaries will not be required to register. This section gives the federal banking agencies one year to create a system for such registration and requires the agencies to coordinate with each other and the new nationwide mortgage licensing system and registry. At a minimum the system will require the fingerprinting and a personal history, including any administrative, civil or criminal findings by any governmental jurisdiction, for the employees of insured depository institutions and their subsidiaries. All names carried in the national registry will also have a unique identifier.

This section also authorizes the regulators to make de minimis exceptions to these requirements for employees not solely engaged in mortgage lending. The regulators are also instructed to make reasonable efforts to utilize existing information to minimize the burden of registering loan originators and to consider methods for automating this process.

Section 107 authorizes the Secretary of Housing and Urban Development to create a backup licensing system if the states do not act to develop a licensing system for mortgage brokers.

Section 108 authorizes the Secretary of Housing and Urban Development to create the nationwide mortgage licensing and registry system in the event the system required in Section 101 is failing to meet its purposes.

Section 109 authorizes the banking agencies, HUD and the nationwide registry to charge fees for the services required in this Title.

Section 110 grants access to records for the background checks to the Attorney General.

Section 111 requires that information in the registry be kept confidential.

Section 112 protects the government entities engage in the requirements of this Title from liability.

Section 113 gives HUD authority to enforce Section 107 in the states.

Subtitle B establishes residential mortgage loan origination standards.

Section 121 defines a number of terms, including mortgage originator, residential mortgage loan, securitizer vehicle, securitizer, and servicer.

Section 122 is one of the sections of the Act that impacts current mortgage lending practices most directly. It amends the Truth in Lending Act (“TILA”) to add a “Duty of Care” standard for mortgage loan origination. Specifically, the section establishes a federal floor requiring mortgage originators to (A) be qualified, and, when required, registered and licensed as a mortgage originator under Subtitle A above, (B) present consumers seeking or inquiring about a mortgage loan with a good faith range of mortgage loan options for which the consumer likely qualifies and which are appropriate to the consumer’s existing circumstances, based on information known by, or obtained in good faith, by the originator, (C) make a disclosure to each consumer of the comparative costs and benefits of each product offered, discussed or referred to by the originator and the nature of the originator’s relationship to the consumer (for example, if the originator is acting as the consumer’s agent) and any conflicts of interest the originator may have, (D) certify to the creditor that the originator has fulfilled all requirements required of him/her under this section, and (E) include the unique identifier of the originator for the nationwide mortgage licensing system and registry.

The section also clarifies that the originator need not offer products for which the originator is not authorized to take an application. The requirement to offer a good faith range of mortgage loan options which are appropriate for the consumer will be presumed to be met if the consumer has a “reasonable ability to repay” and, in the case of a refinancing, receives a “net tangible benefit” as those terms are defined in Title II of the bill and the loan does not have predatory characteristics or effects as determined by the regulations required by this section.

Section 123 is another section of the bill with great impact because it applies to all mortgages, prime and non-prime. It prohibits steering incentives for non-prime mortgages. Specifically, this section prohibits incentive compensation based on the terms (other than principal) of any loan that is not a qualified loan (non-prime). This section prohibits yield spread premiums and any similar incentive compensation based on higher interest rates. The section **does** allow incentive payments to a mortgage originator based on the number of loans originated within a specific period of time and preserves the ability to sell mortgages to subsequent purchasers. The section also makes it clear that consumers may finance origination fees and costs.

The section requires the banking agencies, in consultation with the HUD Secretary, to jointly prescribe regulations to prohibit the steering of a consumer to a prime or non-prime mortgage loan that the borrower lacks a reasonable ability to repay, or in the case of a refinancing, does not provide the consumer with a net tangible benefit or has predatory characteristics or effects, such as equity stripping, excessive fees, or abusive terms. The regulations must also prohibit unfair and deceptive practices and prohibit mortgage originators from steering consumers from a prime loan (“qualified mortgage”) for which the consumer qualifies to a no-prime loan.

Section 124 limits the liability for violations of the subtitle to three times the amount of direct or indirect compensation or gain accruing to the mortgage originator, plus reasonable attorney’s fees.

Section 125 requires the regulations required under this title to be prescribed within 12 months and effective within 18 months of enactment of the bill.

Title II-Minimum Standards for Mortgages

Section 201 establishes the “ability to repay” standard for mortgage loans. Specifically, the section requires the federal banking agencies in consultation with the FTC to jointly prescribe regulations requiring creditors, including banks, to make a reasonable and good faith determination, based on verified and documented information, that at the time a residential mortgage loan is consummated that the borrower has a reasonable ability to repay the loan, according to its terms and all applicable taxes, insurance and assessments. The section also requires this determination to be made for multiple loans secured by the same property if the creditor knows or has reason to know that one or more mortgage loans are secured by the same dwelling. The section requires creditors to base their determination on a consideration of the consumer’s credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratios, employment status and other financial resources other than the equity in the dwelling. For variable rate and interest only mortgages the section requires this determination to be made based on a fully amortized repayment schedule. For negative amortization loans the creditor must consider any balance increase that may result. Finally, the section prescribes the calculation process for calculating the monthly payment and defines the term “fully-indexed rate.”

Section 202 deals with the refinancing of an existing mortgage loan and is the companion to Section 201. Section 202 requires refinanced mortgage loans to provide a “net tangible benefit” to the consumer. As in Section 201, this section requires the federal banking agencies to define “net tangible benefit,” while stating that the loan will not provide a net tangible benefit if the costs of the refinanced loan, including points, fees and other charges, exceed the amount of any newly advanced principal with any corresponding changes in the terms of the refinanced loan that are advantageous to the consumer. This section is a good example of a place where the drafters decided to rely on the regulators to define the term rather than trying to define it themselves as they had done in earlier drafts.

Section 203 is one of the central provisions of the bill. It establishes an unqualified safe harbor for prime mortgage loans (defined as a “qualified mortgage”) and a qualified safe harbor (rebuttable presumption) for certain non-prime mortgage loans.

Prime loans are defined as “qualified mortgages” which meet the following requirements: the loan is a first lien on the dwelling or real property securing the loan and either (a) has an annual percentage rate that does not exceed the comparable maturity of treasury securities by more than 3% points or (b) has an annual percentage rate that does not equal or exceed the most recent conventional mortgage rate, or such other annual percentage rate as may be established by regulations under this section, by more than 175 basis points. For loans that are not first liens the numbers are 5% points or 375 basis points.

The non-prime loans able to take advantage of the qualified safe harbor are defined as “qualified safe harbor mortgages.” These loans must have (a) a periodic interest rate and principal which is fixed for a minimum of 5 years, (b) in the case of a variable rate loan, the

APR varies based on a margin that is less than 3% over a single generally accepted interest rate index that is the basis for determining the rate of interest for the mortgage or (c) the loan does not cause the consumer's total monthly debts to exceed a percentage established by regulation of his or her monthly gross income or such other maximum percentage of such income as may be prescribed by regulation under this section. Qualified safe harbor mortgages must also be made based on verified and documented income and financial information, based on a fully indexed rate taking into account taxes, insurance and assessments and may not result in negative amortization at any time.

The federal banking agencies are required to prescribe rules to carry out this section and, most importantly, they are given the authority to revise, add to, or subtract from the criteria that define a qualified mortgage and a qualified safe harbor mortgage to the extent necessary and appropriate to effectuate the purposes of this section. Finally the section makes it clear that non-prime loans which do not meet the definition of a qualified safe harbor mortgage are not presumed to be in violation of Title II of the bill and therefore may still be made. The unqualified and qualified safe harbors protect creditors from liability under this bill and in conjunction with the next section may protect certain secondary market participants from liability.

Section 204 provides the liability for violations of either duty of care: the "ability to repay" for new mortgages and the "net tangible benefit" test for refinanced mortgage loans. The section also provides the liability for the secondary market and outlines a mechanism for curing problems with mortgages which violate the duty of care. In the first instance the section provides a right of rescission through a civil action for loans which violate the duty of care. A creditor may avoid the rescission if, no later than 90 days after the receipt of notification from the consumer that the loan violates the duty of care, the creditor provides a cure. The section goes on to provide an elaborate mechanism for assignee and securitizer liability, including what to do when the creditor is absent and provides protection for pools of mortgages and investors in pools. Finally, the section provides a 3 year statute of limitation for fixed rate loans. For other loans the statute of limitations is the earlier of the 1 year period beginning on the date the loan resets, adjusts or converts to a fixed rate or the end of the 6 year period beginning on the date the loan is consummated.

Section 205 provides a defense against foreclosure when the consumer has the right to rescind the loan under this title against the creditor, an assignee or securitizer. The section also provides a limited defense against foreclosure if the foreclosure begins after the statute of limitations has run.

Section 206 contains additional standards and requirements such as a prohibition on prepayment penalties for non-prime mortgages, and a phase out of prepayment penalties for prime mortgages: 3% in the first year, 2% in the second year, 1% in the third year and after 3 years no prepayment penalties may be charged on prime loans. The section also contains a prohibition on prepayment penalties for prime mortgages with a fixed interest rate for an introductory period after the beginning of the 3 month period ending on the date of the adjustment or reset. This section also prohibits single premium credit insurance, arbitration clauses in residential mortgages and open end consumer credit plans secured by a consumer's principal dwelling.

This section also imposes a duty on securitizers to retain access to loans, and it protects certain preexisting leases in the event of foreclosure. Finally, the section requires that at least once annually and whenever there is a change in ownership of a mortgage, the servicer must provide a written notice to the consumer identifying the name of the creditor or an assignee or securitizer who should be contacted by the consumer for any reason concerning the consumer's rights with respect to the loan.

Section 207 provides a rule of construction that the rights created in Title II are in addition to and do not supersede, repeal or affect any duty, right, obligation, privilege, or remedy in any other provision of TILA.

Section 208 provides that the assignee liability provisions of this title preempt state laws in this area. The bill does not preempt state laws in any other areas, except to the limited extent preemption is provided in TILA. The TILA preemption applies only when the Federal Reserve Board finds that a conflict exists between state law and TILA.

Section 209 gives the regulators 12 months to write regulations implementing Title II and provides that like Title I, Title II will take effect no later than 18 months after the date of enactment of this bill.

Section 210 doubles the civil liability provisions in section 130 (a)(2) of TILA and adds a three year statute of limitations to that section.

Section 211 protects lenders from liability if the borrower knowingly or willfully and with actual knowledge furnished material information known to be false for purpose of obtaining a mortgage.

Section 212 requires creditors or servicers to provide borrowers with a six-month notice before the reset of hybrid adjustable rate mortgages. The section also provides detailed instructions on the content of the notice.

Section 213 requires a number of additional disclosures at the time of application for adjustable rate mortgages, escrow amounts, settlement charges, and the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly by the consumer, and any additional amount received by the originator from the creditor based on the interest rate of the loan. The section also enhances other mortgage disclosures and mandates when the disclosures must be given.

Section 214 requires certain disclosures on the monthly mortgage statement. These disclosures are generally already given by banks.

Section 215 authorizes an appropriation of funds to support the FBI and Department of Justice in investigating mortgage fraud.

Sections 216 states that Title II will apply to transactions consummated on or after the effective date of regulations specified in Section 209. The section means the title will apply only prospectively.

Section 217 requires the GAO to conduct a study on the effect of this bill on the mortgage markets.

Title III-High Cost Mortgages

Section 301 lowers the HOEPA triggers in TILA and defines more mortgages as high cost mortgages. Specifically, a first mortgage is high cost if the APR exceeds by more than 8% points the yield on treasury securities having a comparable maturity. A junior or subordinate mortgage is high cost if the APR exceeds by more than 10% points the yield on treasury securities having a comparable maturity. The section also includes in the definition of high cost mortgage any mortgage where the points and fees exceed 5% in the case of transactions for \$20,000 or more, or in the case of transactions for less than \$20,000 the lesser of 8% or the transaction amount or \$1,000. High cost mortgages are also any mortgages where the creditor may charge or collect prepayment penalties more than 36 months after the transaction closing or such fees or penalties exceed 2% of the amount prepaid.

Section 302 prohibits prepayment penalties, balloon payments and lending without due regard to the ability of the borrower to repay a high cost mortgage.

Section 303 adds a number of additional prohibitions and restrictions in the area of high cost mortgages. The section limits late fees, prohibits a creditor from recommending or encouraging default, prohibits the acceleration of the debt, restricts the financing of points and fees, changes the disclosures required for high cost mortgages and requires pre-loan counseling. Finally this section defines and prohibits flipping of high cost mortgages that have no net tangible benefit to the consumer.

Section 304 governs the correction of errors by lenders within 30 days of loan closing if the changes are beneficial to the borrower and restitution is provided.

Sections 305 gives the Federal Reserve Board six months to write regulations implementing this title.

Section 306 makes the title effective within six months of the enactment of this bill.

Title IV-Office of Housing Counseling

Section 401 is a title section

Section 402 establishes an office of housing counseling with the Department of Housing and Urban Development. This sections describes the functions of the office, and establishes an advisory committee.

Section 403 establishes the procedures and activities for homeownership counseling, rental housing counseling, national public service multimedia campaigns to promote housing counseling, and education programs to be developed by the office of housing counseling.

Section 404 provides grants for housing counseling assistance to states, local governments and nonprofit organizations.

Section 405 requires the use of HUD-certified counselors under HUD programs and grants.

Section 406 requires the HUD Secretary to study the root causes of default and foreclosure of home loans.

Section 407 defines nonprofit organization, state governmental entities and units of general local government.

Section 408 requires the HUD Secretary to prepare, update every five years and distribute a booklet to help consumers applying for federally related mortgage loans. The section also describes the content of the booklet.

Title V-Mortgage Disclosure Under RESPA

Section 501 revises the good faith estimate of settlement services costs document and creates a universal mortgage disclosure document. The section requires the HUD Secretary to create a new good faith estimate disclosure form. The section sets forth the required content of the disclosure and the appearance of the form. The Secretary of HUD has 180 days following the enactment of this bill to write the regulations required by this section.

Title VI-Mortgage Servicing

Section 601 requires creditors to establish an escrow account for the payment of taxes and hazard insurance, ground rents and any other required periodic payments or premiums associated with a mortgage loan. The section describes the limited instances when the escrow account will not be required. The section also mandates how long the escrow account will be required, how it must be administered, how interest should be paid on the funds in the account and the disclosures required in connection with such accounts. The Federal Reserve Board is given 180 days to write regulations implementing the section and the section will be effective one year after the publication of final regulations in the Federal Register.

Section 602 sets out disclosures which must be given to consumers who waive escrow services and gives the Federal Reserve Board 180 days to write the regulations which will take effect in the same manner as those required in Section 601.

Section 603 prohibits servicers from obtaining force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract's requirements to maintain property insurance. The section goes on to define force-placed insurance, the requirement for its use, disclosures which must be given to the borrower if it is put in place, how the insurance can be terminated and other limitations on its use, including penalties if it is misused.

Section 604 requires the HUD Secretary to conduct a study of mortgage servicing practices and their potential for fraud and abuse.

Section 605 requires that escrow amounts be included in any repayment analysis required by TILA, such as those required in Title II.

Title VII-Appraisal Activities

Section 701 establishes property appraisal requirements for mortgage loans. First, the section requires creditors to obtain an appraisal before they extend mortgage credit. Second, the section describes the appraisal requirements, such as the need for a physical property visit and the need for a second appraisal in certain circumstances. The section prohibits the cost of the appraisal from being paid by the borrower and requires creditors to give borrowers one free copy of the appraisal. The section defines “qualified appraiser” and requires creditors to provide consumers with a statement that any appraisal prepared for the mortgage is for the sole use of the creditor, and the consumer may choose to have a separate appraisal conducted at their own expense. Failure to obtain an appraisal as required by this section may result in liability to the consumer in the amount of \$2,000.

Section 702 defines as an unfair and deceptive act or practice taking any action to compensate, coerce, extort, collude, bribe, or influence an appraiser or otherwise encourage an appraiser to reach a targeted value. The section outlines a few legitimate actions which the creditor may take with respect to the appraiser and the appraisal. The federal banking agencies have rule making authority under this section, and the section provides for penalties up to \$10,000 per day for first violations and up to \$20,000 for subsequent violations.

Section 703 establishes an appraisal subcommittee of the FFIEC, requires appraiser independence and establishes a requirement for the states to license appraisers and provide requirements for their continuing education. The FFIEC is given authority to monitor these activities of the states.

Section 704 requires the Comptroller General to conduct a comprehensive study on possible improvements in the appraisal process.

Section 705 requires a disclosure to consumers that they are entitled to a copy of all appraisal reports upon their property no later than three business days prior to the closing date of their mortgage.