

Borrower's Protection Act of 2007 (Introduced in Senate)

S 1299 IS

110th CONGRESS
1st Session
S. 1299

To establish on behalf of consumers a fiduciary duty and other standards of care for mortgage brokers and originators, and to establish standards to assess a consumer's ability to repay, and for other purposes.

IN THE SENATE OF THE UNITED STATES

May 3, 2007

Mr. SCHUMER (for himself, Mr. BROWN, and Mr. CASEY) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To establish on behalf of consumers a fiduciary duty and other standards of care for mortgage brokers and originators, and to establish standards to assess a consumer's ability to repay, 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 `Borrower's Protection Act of 2007'.

SEC. 2. MORTGAGE ORIGINATOR REQUIREMENTS.

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. DUTIES OF MORTGAGE ORIGINATORS.

- ` (a) Definitions- As used in this section--
 - ` (1) the term `home mortgage loan' means an extension of credit secured by or to be secured by a security interest in the principal dwelling of the obligor;

` (2) 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, or refers applicants or prospective applicants to creditors, or selects or offers to select creditors to whom requests for credit may be made;

` (3) the term `mortgage originator' means--

` (A) 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 borrowers, negotiation of terms or conditions of home mortgage loans on behalf of borrowers or lenders, or negotiation of sales of existing home mortgage loans to institutional or non-institutional lenders; and

` (B) any employee or agent of a creditor or person described in subparagraph (A);

` (4) 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; and

` (5) the term `rate spread mortgage transaction' means a home mortgage loan that has an annual percentage rate of interest that equals or exceeds the rate that would require reporting under the Home Mortgage Disclosure Act (12 U.S.C. 2801 et seq.) as a rate spread loan, without regard to whether such loan is otherwise subject to the Home Mortgage Disclosure Act.

` (b) Standard of Care-

` (1) FIDUCIARY RELATIONSHIP- In the case of a home mortgage loan, the mortgage broker shall be deemed to have a fiduciary relationship with the consumer, and each such mortgage broker shall be subject to all requirements for fiduciaries otherwise applicable under State or Federal law.

` (2) FAIR DEALING- Each mortgage originator shall, in addition to the duties imposed by otherwise applicable provisions of

State or Federal law, with respect to each home mortgage loan in which the mortgage originator is involved--

- ˘ (A) act with reasonable skill, care, and diligence; and
- ˘ (B) act in good faith and with fair dealing in any transaction, practice, or course of business associated with the transaction.

˘ (c) Assessment of Ability to Repay-

˘ (1) IN GENERAL- Each mortgage originator shall, before entering into or otherwise facilitating any home mortgage loan, verify the reasonable ability of the borrower to pay the principal and interest on the loan, and any real estate taxes and homeowners insurance fees and premiums.

˘ (2) VARIABLE MORTGAGE RATES- In the case of a home 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 maximum possible monthly payment that could be due from the borrower during the first 7 years of the loan term, which amount shall be calculated by--

- ˘ (A) using the maximum interest rate allowable under the loan; and
- ˘ (B) assuming no default by the borrower, a repayment schedule which achieves full amortization over the life of the loan.

˘ (3) REQUIRED VERIFICATION DOCUMENTS-

˘ (A) IN GENERAL- For purposes of paragraph (1), a mortgage originator shall base a determination of the ability to pay on--

- ˘ (i) documentation of the income and financial resources of the borrower, including tax returns, payroll receipts, bank records, or other similarly reliable documents; and
- ˘ (ii) the debt-to-income ratio and residual income of the borrower, as determined under section 36.4337 of title 38 of the Code of Federal Regulations, or any successor thereto.

˘ (B) LIMITATION- A statement provided by the borrower of the income and financial resources of the borrower, without other documentation referred to in this paragraph, is not sufficient verification for purposes of assessing the ability of the consumer to pay.

˘ (d) Rate Spread Mortgages-

˘ (1) ESCROW ACCOUNT REQUIRED- In the case of a rate spread mortgage transaction, the obligor shall be required to make monthly payments into an escrow account established by the mortgage originator for the purpose of paying taxes, hazard insurance premiums, and, if applicable, flood insurance premiums.

˘ (2) EXCEPTION- This paragraph does not apply in any case in which the mortgage originator reasonably believes that, following the loan closing, the obligor will be required, or will continue to be required, to make escrow payments described in paragraph (1) on the property securing the loan in connection with another loan secured by the same property.

˘ (3) LENDER AND BROKER LIABILITY- In any case in which a mortgage broker sells or delivers a rate spread mortgage loan to a lender, the lender shall be liable for the acts, omissions, and representations made by the mortgage broker in connection with that mortgage loan.

˘ (e) Steering Prohibited-

˘ (1) IN GENERAL- In connection with a home mortgage loan, a mortgage originator may not steer, counsel, or direct a consumer to rates, charges, principal amount, or prepayment terms that are not reasonably advantageous to the consumer, in light of all of the circumstances associated with the transaction, including the characteristics of the property that secures or will secure the extension of credit and the loan terms for which the consumer qualifies.

˘ (2) DUTIES TO CONSUMERS- If unable to suggest, offer, or recommend to a consumer a reasonably advantageous home loan, a mortgage originator shall--

˘ (A) based on the information reasonably available and using the skill, care, and diligence reasonably expected for a mortgage originator, originate or otherwise facilitate a reasonably advantageous home mortgage loan by another creditor to a consumer, if permitted by and in accordance with all otherwise applicable law; or

˘ (B) disclose to a consumer--

˘ (i) that the creditor does not offer a home mortgage loan that would be reasonably advantageous to a consumer, but that other creditors may offer such a loan; and

˘ (ii) 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; or

˘ (C) if unable to suggest, offer, or recommend to a consumer a reasonably advantageous home mortgage loan, discourage a consumer from seeking a home

mortgage loan from another creditor or with another mortgage originator.

ˆ (4) RULE OF CONSTRUCTION- Nothing in this subsection shall be deemed to prohibit a mortgage originator from providing a consumer with accurate, unbiased, general information about home mortgage loans, underwriting standards, ways to improve credit history, or any other matter relevant to a consumer.

ˆ (f) Good Faith and Fair Dealing in Appraisal Process-

ˆ (1) IN GENERAL- No mortgage originator may enter into a home mortgage loan with respect to which the mortgage originator has reason to believe that, with respect to the appraisal of the value of the property securing the loan--

ˆ (A) the appraiser failed to act in good faith and fair dealing with respect to the consumer in connection with the appraisal;

ˆ (B) the appraisal was conducted other than in accordance with all applicable State and Federal standards required of certified appraisers, or was otherwise not accurate and reasonable;

ˆ (C) the appraiser had a direct or indirect interest in the property or the transaction;

ˆ (D) the appraiser charged, sought, or received compensation for the appraisal, and the appraisal was not covered by a qualifying bond; or

ˆ (E) the appraisal order or any other communication in any form includes the requested loan amount or any estimate of value for the property to serve as collateral, either express or implied.

ˆ (2) PROHIBITED INFLUENCE- No mortgage originator may, with respect to a home mortgage loan, in any way--

ˆ (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

ˆ (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.

ˆ (3) LIMITATION ON DEFENSES- It shall not be a defense to enforcement of the requirements of this subsection that the mortgage originator used another person in the appraisal process or to review the appraisal process.

ˆ (4) NOTICE OF APPRAISAL- In any case in which an appraisal is performed in connection with a home mortgage loan, the mortgage originator 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.'

SEC. 3. CONFORMING AND CLERICAL AMENDMENTS.

The Truth in Lending Act (15 U.S.C. 1601 et seq.) is amended--
(1) in section 103(u) (15 U.S.C. 1602(u)), by striking
`disclosures required by section 129(a)' and inserting
`provisions of section 129 and 129A';
(2) in section 130 (15 U.S.C. 1640) by inserting `or 129A' after
`section 129' each place that term appears; and
(3) in the table of sections for chapter 2 (15 U.S.C. 1631 et
seq.), by inserting after the item relating to section 129 the
following:
`129A. Duties of mortgage originators.'

Source: <http://thomas.loc.gov/cgi-bin/query/z?c110:S.1299>: