



H.R. 3915 – Mortgage Reform and Anti-Predatory Lending Act of 2007

EXECUTIVE SUMMARY

The House is expected to consider the Mortgage Reform and Anti-Predatory Lending Act of 2007 (H.R. 3915) on November 15, 2007. The bill, as amended, was approved by the Financial Services Committee on November 6, 2007, by a vote of 45 to 19 ([FC-80](#)).

H.R. 3915 provides new regulations and licensing requirements on mortgage loan originators. In addition, it requires these originators to make a reasonable determination that the consumer has the ability to repay the loan or that a refinanced loan will provide a net tangible benefit for the consumer.

This bill also expands the scope of the Home Ownership and Equity Protection Act of 1994 (HOPEA) to cover more types of loans, to lower the “thresholds” so that loans with requirements, to add additional charges to the “points and fees” calculation used for the threshold, and to impose additional obligations on covered loans.

**Note: Republicans on the Financial Services Committee were split on the legislation during mark-up, with 9 supporting final passage and 19 opposing; 5 were not present for the recorded vote. Those that oppose the legislation raise concerns that the bill’s expansion of Home Ownership and Equity Protection Act (HOPEA) covered mortgages, the subjective standards applicable to the loan origination and underwriting process, and the vastly increased liability to loan purchases will greatly reduce mortgage lending, hurting millions of borrowers.*

The Statement of Administration Policy (SAP) does not contain a veto threat, but does outline several concerns with the bill as drafted. The Administration is concerned that some provisions of the bill “could overly constrict the primary and secondary markets for mortgage finance.”

FLOOR SITUATION

H.R. 3915 is being considered on the floor pursuant to a structured rule. The rule:

- Provides one hour of general debate equally divided and controlled by the Chairman and Ranking Minority Member of the Committee on Financial Services.
- Waives all points of order against consideration of the bill except for clauses 9 and 10 of rule XXI.

- Provides that the amendment in the nature of a substitute recommended by the Committee on Financial Services, now printed in the bill, shall be considered as an original bill for the purpose of amendment and shall be considered as read.
- Waives all points of order against the amendment in the nature of a substitute except for clause 10 of rule XXI. This waiver does not affect the point of order available under clause 9 of rule XXI (regarding earmark disclosure).
- No amendments shall be in order except those amendments printed in the Rules Committee report accompanying the resolution.
- Provides that the amendments made in order may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment except as specified in the report, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole.
- Waives all points of order against the amendments printed in the report except for clauses 9 and 10 of rule XXI.
- Provides one motion to recommit with or without instructions.
- Provides that, notwithstanding the operation of the previous question, the Chair may postpone further consideration of the bill to a time designated by the Speaker.

Representative Brad Miller (D-NC) introduced the Mortgage Reform and Anti-Predatory Lending Act of 2007 (H.R. 3915) on October 22, 2007. The bill, as amended, was approved by the Committee on Financial Services on November 6, 2007, by a vote of 45 to 19.

The bill expected to be considered on the floor on November 15, 2007.

BACKGROUND

This past year the U.S. housing market illustrated a significant increase in delinquencies and defaults among subprime borrowers, leading to decreasing housing prices in regions across the country and turmoil in the mortgage finance sector. The American home loan market has \$10 trillion in loans outstanding, the most ever, according the Federal Reserve. Subprime mortgages made up about 20 percent of the mortgages issued last year and about 11 percent in the first half of 2007.

This summer, problems in the subprime mortgage sector leaked over into the larger credit markets. After an extended period of “easy credit” that helped increase a boom in

leveraged buy-outs and a thriving market in mortgage-backed securities, an entrenched dislike to risk seized, driving up the cost of credit across global capital markets.

While some argue that H.R. 3915 is an appropriate response to the startling increase of foreclosures in the mortgage market, others believe that Congress should urge caution before restructuring the relationships between American homeowners and mortgage companies. According to the Wall Street Journal, “roughly 35% of homeowners have no mortgage debt remaining on their homes. Of those homeowners still paying a mortgage, 95% are paying on time. And even in the risky category of subprime adjustable-rate loans, more than 83% are still paying on time.”

Title I – Residential Mortgage Loan Origination

Subtitle A-Licensing System for Residential Mortgage Loan Originators

Purposes and Methods for Establishing a Mortgage Licensing System and Registry (Section 101)

- Encourages the establishment of a Nationwide Mortgage Licensing System and Registry (NMLSR) through the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators.

License or Registration Required (Section 103)

- Establishes that an individual may not engage in the business of a loan originator without first (1) obtaining and maintaining a registration as a registered loan originator or a license and registration as a State-licensed loan originator; (2) obtaining a unique identifier.
- Establishes that a loan processor or underwriter is not required to be a State-licensed loan originator or a registered loan originator if he/she does not represent to the public, through advertising or other means of communicating or providing information, that he/she can or will perform any of the activities of a loan originator.
- Establishes that a loan processor or underwriter will not work as an independent contractor unless such processor or underwriter is a State-licensed loan originator or a registered loan originator.

** Note – a loan processor or underwriter means an individual who performs clerical or support duties at the direction of and subject to the supervision and instruction of a State-licensed loan originator, or a registered loan originator.*

State License and Registration Application and Issuance (Section 104)

- Establishes standards for issuance of a state license, including: NMLSR information regarding identity, minimum educational requirements, license history of applicant, and scores on pre-licensing tests requires.

Standards for State License Renewal (Section 105)

- Establishes that minimum standards for license renewal include that the loan originator continues to meet minimum standards for license issuance that he/she has satisfied the annual continuing education requirements.
- Establishes that in order to meet the annual continuing education requirements, a loan originator must complete 8 hours of approved education that includes 3 hours of Federal law and regulations and 2 hours of ethics.

System of Registration Administration by Federal Banking Agencies (Section 106)

- Requires the Federal banking agencies to jointly maintain a system for registering employees of depository institutions or subsidiaries of depository institutions as registered loan originators with the NMLSR.
- Requires the system to be implemented before the end of the 1-year period beginning on the date of the enactment of this Act.
- Establishes that the Federal banking agencies, through the Financial Institutions Examination Council (FIEC), will coordinate with the NMLSR and Registry to establish a unique identifier for all registered loan originators that will facilitate electronic tracking and uniform identification of, and public access to, the employment history of and publicly adjudicated disciplinary and enforcement actions against loan originators.

Secretary of Housing and Urban Development Backup Authority to Establish a Loan Originator Licensing System (Section 107)

- Establishes that if a State fails to have in place a system that meets the minimum standards set forth in this section for State-licensed loan originators or does not participate in the NMLSR within 1 year of enactment (or 2 years for States with legislatures that convene biennially) or anytime thereafter, the Secretary of HUD is required to establish and maintain a system for licensing and registration of loan originators.
- Requires the Secretary to meet the requirements of Section 104 and 105 for State-licensed loan originators.

Backup Authority to Establish a Nationwide Mortgage Licensing and Registry System (Section 108)

- Establishes that if at any time the NMLSR and Registry is failing to meet the requirements of the legislation, the Secretary of HUD will develop and maintain a system for registration and regulation of mortgage originators.

Fees (Section 109)

- Establishes that the Federal banking agencies, the Secretary of HUD, and the NMLSR, may charge reasonable fees to cover the costs of maintaining and providing

access to information from the NMLSR to the extent that the fees are not charged to consumers for accessing the system and registry.

Background Checks of Loan Originators (Section 110)

- Requires the Attorney General to provide access to all criminal history information to States for regulating State-licensed loan originators to the extent criminal background checks are required under State law for licensing loan originators.

Enforcement Under HUD Backup Licensing System (Section 113)

- Authorizes HUD to setup a backup licensing system pursuant to Section 107, in which HUD will have regulatory authority over the system and the Secretary may administer oaths and affirmations and examine and take and preserve testimony under oath as to any matter in respect to the affairs of any such loan originator.
- Authorizes the Secretary to issue an order to prohibit any person who has violated this subtitle or regulations there under from serving as a loan originator.
- Authorizes the Secretary to impose a civil penalty on a loan originator if the Secretary finds that the loan originator has violated or failed to comply with any requirement of this subtitle or any regulation prescribed by the Secretary.
- Establishes that the maximum amount of penalty for each act or omission is \$5,000 for each day the violation continues.

Residential Mortgage Loan Origination (Section 122)

- Establishes that all mortgage originators are subject to a federal duty of care –
 - requiring licensing and regulation under applicable State or Federal law;
 - diligently working to present the consumer with a range of residential mortgage loan products that the consumer likely qualifies and that are appropriate to the consumer's existing circumstances, based on information known by, or obtained in good faith by, the originator;
 - making full, complete, and timely disclosure to each consumer of –
 - comparative costs and benefits of each residential mortgage loan product offered, discussed, or referred to by the originator;
 - the nature of the originator's relationship to the consumer (including cost of the services to be provided by the originator and a statement that the mortgage originator is or is not acting as an agent for the consumer, as the case may be); and
 - any relevant conflicts of interest.
 - Certification to the creditor, with respect to any transaction involving a residential mortgage loan, that the mortgage originator has fulfilled all requirements applicable to the originator under this section with respect to the transaction; and
 - Inclusion of the unique identifier the originator provided by the NMLSR on all loan documents.

- Establishes that mortgage originators are not required to offer products that the creditor does not offer to the general public.
- Establishes that a residential mortgage loan is presumed appropriate for a consumer if –
 - The mortgage originator determines in good faith that the consumer has a reasonable ability to repay and receives a net tangible benefit; and
 - The loan does not have predatory characteristic or effects (such as equity stripping and excessive fees and abusive terms).
- Establishes that this subsection does not restrict a mortgage originator from holding himself/herself out as an agent or fiduciary of a consumer subject to any additional duty, requirement, or limitation applicable to agents or fiduciaries under any Federal or State law.
- Establishes that the Federal banking agencies will prescribe regulations to establish and maintain procedures to ensure and monitor the compliance of such depository institutions.

Anti-Steering (Section 123)

- Establishes that no mortgage originator may receive from any person, and no person may pay to any mortgage originator, any incentive compensation (including yield spread premium) that is based on, or varies with, the terms of any loan that is not a qualified mortgage.
- Requires the Federal banking agencies, in consultation with the Secretary and the FTC to jointly prescribe regulations to prohibit –
 - mortgage originators from steering any consumer to a residential mortgage loan that –
 - the consumer lacks a reasonable ability to repay;
 - 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);
 - mortgage originators from steering any consumer from a residential mortgage loan for which the consumer is qualified that is a qualified mortgage to a residential mortgage loan that is not a qualified mortgage; and
 - abusive or unfair lending practices that promote disparities among consumers of equal credit worthiness but of different race, ethnicity, gender, or age.
- Establishes that no provision of this subsection shall be construed as –
 - limiting or affecting the ability of a mortgage originator to sell residential mortgage loans to subsequent purchasers;
 - restricting a consumer's ability to finance origination fees to the extent that such fees were fully disclosed to the consumer earlier in the application process and do not vary based on the terms of the loan or the consumer's decision about whether to finance such fees; or

- prohibiting incentive payments to a mortgage originator based on the number of residential mortgage loans originated within a specified period of time.

Liability (Section 124)

- Establishes that a cause of action will exist for a mortgage originator's failure to comply with this section.
- Establishes that the maximum liability of a mortgage originator for violation of this section will not exceed three times the total amount of mortgage originators fees, plus the costs to the consumer of the action, including a reasonable attorney's fee.

Regulations (Section 125)

- Establishes that regulations under this title will be prescribed in final form before the end of the 12-month period beginning on the date of the enactment of this Act and will take effect no later than 18 months after the date of the enactment of this Act.

Title II – MINIMUM STANDARDS FOR MORTGAGES

Ability to Repay (Section 201)

- Establishes that no creditor may make a residential mortgage loan unless the creditor makes a reasonable and good faith determination based on verified and documented information that, at the time the loan is consummated, the consumer has a reasonable ability to repay the loan, according to its terms, and all applicable taxes, insurance, and assessments.
- Establishes that a determination under this subsection of a consumer's ability to repay a residential mortgage loan is based on consideration of the consumer's credit history, current income, expected income the consumer is reasonably assured of receiving, current obligations, debt-to-income ratio, employment status, and other financial resources other than the consumer's equity in the dwelling or real property that secures repayment of the loan.
- Establishes that a creditor will also take into consideration any balance increase that may accrue from any negative amortization provision.

Net Tangible Benefit for Refinancing of Residential Mortgage Loans (Section 202)

- Establishes that no creditor may extend credit in connection with any residential mortgage loan that involves a refinancing of a prior existing residential mortgage loan unless the creditor reasonable and in good faith determines that the refinanced loan will provide a net tangible benefit to the consumer.
- Establishes that a residential mortgage loan that involves a refinancing of a prior existing residential mortgage loan is not considered to provide a net tangible benefit to the consumer if the costs of the refinanced loans, including points, fees and other charges, exceed the amount of any newly advanced principal without any

corresponding changes in the terms of the refinanced loan that are advantageous to the consumer.

- Establishes that the Federal agencies will jointly prescribe regulations defining the term ‘net tangible benefit’ for purposes of this subsection.

Safe Harbor and Rebuttable Presumption (Section 203)

- Establishes that any creditor with respect to any residential mortgage loan, and any assignee or securitizer of such loan, may presume that the loan has met the requirements if the loan is a qualified mortgage or qualified safe harbor mortgage.
- Establishes that any presumption established with respect to any residential mortgage loan shall be rebuttable only against the creditor of such loan and if such loan is a qualified safe harbor mortgage.
- Requires the Federal banking agencies to jointly prescribe regulations to carry out the purposes of this subsection.
- Authorizes the Federal banking agencies to jointly prescribe regulations that define a qualified mortgage and a qualified safe harbor mortgage, to prevent circumvention or evasion of this subsection, or to facilitate compliance with this subsection.
- Establishes that no provision of this subsection may be construed as implying that a residential mortgage loan may be presumed to violate if such loan is not a qualified mortgage or a qualified safe harbor mortgage.

Liability (Section 204)

- Establishes that for a loan that violates the minimum standards for reasonable ability to repay or net tangible benefits as set forth by regulation, a consumer has a cause of action against a creditor for rescission of the loan and the consumer’s costs.
- Establishes that a creditor will not be liable for such rescission if the creditor provides a cure to make the loan conform to the minimum standards with 90 days of receiving notice from the consumer.

** Note – the term ‘cure’ means, with respect to a residential loan the pursuant subsection, the modification or refinancing, at no cost to the consumer, of the loan to provide terms that would have satisfied the requirements if the loan had contained such terms as of the origination of the loan.*

- Establishes that for a loan that violates the minimum standards, a consumer has an individual cause of action against any assignee or securitizer for rescission of the loan and the consumer’s costs.
- Establishes that an assignee or securitizer will not be liable for a loan that violates the minimum standards if the assignee or securitizer –

- Provide a cure to make the loan conform to the minimum standards within 90 days of receiving notice from the consumer; or
 - Has a policy against buying mortgage loans that are not qualified mortgages or qualified safe harbor mortgages and, in accordance with regulations that the Federal banking agencies and SEC will jointly prescribe, exercises reasonable due diligence to adhere to such policy, including through sampling and has obtained representatives and warranties from the seller or assignor of the loan regarding not selling or assigning the loans that violate the minimum standards and takes reasonable steps to obtain the benefit of such representatives or warranties.
- Establishes that if any creditor, assignee or securitizer and a consumer fail to agree on a cure, or if the consumer fails to accept a cure, the creditor, assignee, or securitizer may provide the cure and the consumer may challenge the adequacy of the cure within 6 months of the cure.
 - Establishes that if a creditor, assignee, or securitizer cannot provide rescission, that they can provide the financial equivalent.
 - Establishes that liability of a creditor, assignee, or securitizer will apply for 3 years after consummation of the loan or, for a variable rate loan or a negative amortization loan, the earlier of 1 year after the loan resets or 6 years after consummation of the loan.
 - Clarifies that in the case of residential mortgage loans acquired or aggregated for the purpose of including such loans in a pool of assets that liability will not apply to pools of loans, including the securitization vehicle, or investors in pools of loans.

** Note – securitization vehicle means a trust, corporation, partnership, limited liability entity, or special purpose entity that is the issuer, or is created by the issuer, of mortgage pass-through certificates, participation certificates, mortgage-backed securities, or other similar securities backed by a pool of assets that includes residential mortgage loans and holds such loans.*

Defense to Foreclosure (Section 205)

- Establishes that when the holder of a residential mortgage loan or anyone acting for such holder initiates a judicial or nonjudicial foreclosure –
 - a consumer who has the right to rescind under this section with respect to such loan against the creditor or any assignee or securitizer may assert such right as a defense to foreclosure or counterclaim to such foreclosure against the holder; or
 - if the foreclosure proceeding begins after the end of the period during which a consumer may bring an action for rescission, the consumer may seek actual damages incurred by reason of the violation which gave rise to the right of rescission, together with costs of the action, including a reasonable attorney's fee against the creditor or any assignee or securitizer; and

Additional Standards and Requirements (Section 206)

- Prohibits prepayment penalties on loans that are not qualified mortgages as defined in Section 203, and requires that all remaining prepayment penalties expire three months before a loan resets.
- Prohibits a creditor from financing, directly or indirectly, in connection with any residential mortgage loan or with any extension of credit under an open end consumer credit plan secured by the principal dwelling of the consumer (other than a reverse mortgage), any credit life, credit disability, credit unemployment or credit property insurance, or any other accident, loss-of-income, life or health insurance, or any payments directly or indirectly for any debt cancellation or suspension agreement or contract, except that insurance premiums or debt cancellation or suspension fees calculated and paid in full on a monthly basis shall not be considered financed by the creditor.
- Allows any securitizer to reserve the right and preserve an ability, in any document or contract establishing any pool of assets that includes any residential mortgage loan –
 - to identify and obtain access to any such loan in the pool; and
 - to provide for and obtain a remedy under this title for the obligor under any such loan.
- Establishes that in the case of foreclosure, any successor in interest will take over the property subject to any bona fide lease made to a bona fide tenant entered into before the notice of foreclosure.
- Establishes that bona fide tenants will receive at least a 90-day notice before required to vacate.
- Establishes that for the purpose of this section, a lease or tenancy is considered bona fide only if –
 - the lease or tenancy was the result of an arms-length transaction; or
 - the lease or tenancy requires the tenant to pay rent that is not substantially less than fair market rent for the property.
- Prohibits single-premium credit insurance and mandatory arbitration on mortgage loans.
- Prohibits negative amortization loans to a first-time borrower unless the creditor makes certain disclosures to the borrower and the borrower has received homeownership counseling from a HUD-certified organization or counselor.

Effect on State Laws (Section 208)

- Establishes that the provisions of section 204 will supersede any State law that provides additional remedies against any assignee, securitizer, or securitization vehicle, and the remedies in section 204 will constitute the sole remedies against any assignee, securitizer, or securitization vehicle, for a violation of section 201 or 202

(relating to ability to repay or net tangible benefit) or any other State law arising out of or relating to the specific subject matter of section 201 or 202.

Regulations (Section 209)

- Establishes that regulations or authorized to be prescribed under this title or the amendments made by this title will be prescribed in final form before the end of the 12-month period beginning on the date of the enactment of this Act, and will take effect no later than 18 months after the date of the enactment of this Act.

Amendments to Civil Liability Provisions (Section 210)

- Doubles the amount of certain statutory civil liability penalties currently applicable under TILA and extends the statute limitations from one year to three years.

Required Disclosures (Section 211)

- Requires disclosures when concerning –
 - an extension of credit that is secured by the dwelling of a consumer based on the maximum interest rate allowed;
 - a residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurance, and assessments, the monthly payment amount to cover the costs of taxes and insurance; a residential mortgage loan for which an escrow or impound account will be established for the payment of all applicable taxes, insurances, and assessments.
 - a residential mortgage loan, the aggregate amount of settlement charges for all settlement services provided in connection with the loan, the amount of charges that are included in the loan and the amount of such charges the borrower must pay at closing, the approximate amount of the wholesale rate of funds in connection with the loan, and the aggregate amount of other fees or required payments in connection with the loan.
 - a residential mortgage loan, the aggregate amount of fees paid to the mortgage originator in connection with the loan, the amount of such fees paid directly or indirectly by the consumer, and any additional amount received by the originator from the creditor based on the interest rate of the loan.

Authorization of Appropriations (Section 212)

- Authorizes appropriations for fiscal years 2008-2012 to the Attorney General a total of \$31,250,000 to support the employment of 30 additional agents of the FBI and 2 additional dedicated prosecutors at DoJ to coordinate prosecution of mortgage fraud efforts with the offices of the United States Attorneys, and \$750,000 to support the operations of interagency task forces of the FBI in the areas with the 15 highest concentrations of mortgage fraud.

Effective Date (Section 213)

- Establishes that the amendments made by this title will apply to transactions consummated on or after the effective date of the regulations specified in Section 209.

Title III – HIGH COST MORTGAGES

Definitions Relating to High-Cost Mortgages (Section 301)

- Establishes that HOPEA (the Home Ownership and Equity Protection Act of 1994) will now also cover purchase money loans and open-end loans.
- Establishes that the existing Federal Reserve standard for the APR trigger which is set at 8 percent above comparable Treasury securities for first time mortgages and Treasuries plus 10 percent for subordinate mortgages.
- Establishes that the points and fees trigger is lowered from 8 percent to 5 percent for most loans.
- Clarifies that the points and fees trigger stays at 8 percent from loans secured by a dwelling that is personal property.
- Establishes that credit transaction documents permit the creditor to charge or collect prepayment fees or penalties more than 36 months after the transaction closing or such fees or penalties exceed, in the aggregate, more than 2 percent of the amount prepaid.
- Establishes that the definition of points and fees is expanded to include all compensation paid directly or indirectly by a consumer or creditor to a mortgage broker from any source (including table-funded transactions), certain insurance premiums, prepayment penalty charges under the loan, and prepayment penalties actually charged in a refinance by the original creditor or the original creditor's affiliate.
- Clarifies that a creditor may receive indirect compensation solely as a result of obtaining distributions of profits from an affiliated entity based on its ownership interest in compliance with RESPA (Real Estate Settlement Procedures Act of 1974).
- Establishes that any person who originates or brokers 2 or more mortgages in any 12-month period, any person who originates 1 or more such mortgages through a mortgage broker in any 12-month period, or, in connection with a table funding transaction of such a mortgage, any person to whom the obligation is initially assigned at or after settlement is considered a creditor for purposes of this title.
- Clarifies that discount points used to purchase an interest rate reduction, unless the amount of the interest rate reduction purchased is reasonably consistent with established industry norms and practices for secondary mortgage market transactions, will not apply.

Amendments to Existing Requirements for Certain Mortgages (Section 302)

- Prohibits prepayment penalties on HOPEA loans with principal amounts below the FHA loan limit for a given geographical area.

- Prohibits balloon payments on high-cost mortgages unless the payment schedule is adjusted to the seasonal or irregular income of the consumer.
- Establishes an additional high-cost mortgage “ability to repay” protections.
- Allows creditors to consider a number of factors including current and expected income, current obligations, and employment status.

Additional Requirements for Certain Mortgages (Section 303)

- Prohibits a creditor from recommending or encouraging default on an existing loan or other debt prior to and in connection with the closing or planned closing of a high-cost mortgage that refinances all or any portion of such existing loan or debt.
- Clarifies that if a payment is otherwise a full payment for the applicable period and is paid on its due date or within an applicable grace period, and the only delinquency or insufficiency of payment is attributable to any late fee or delinquency charge assessed on any earlier payment, no late fee or delinquency charge may be imposed on such payment.
- Establishes that if, in the case of a loan agreement the terms of which provide that any payment is to first be applied to any past due principal balance, the consumer fails to make an installment payment and the consumer subsequently resumes making installment payments but has not paid all past due installments, the creditor may impose a separate late payment charge or fee for any principal due (without deduction due to late fees or related fees) until the default is cured.
- Establishes a creditor may not unilaterally accelerate a high-cost mortgage.
- Prohibits a creditor from directly or indirectly financing points and fees for high-cost mortgages (the restriction applies to prepayment penalties if the creditor or an affiliate is the note holder of the note being refinanced).
- Establishes that a creditor cannot structure a high-cost mortgage to evade HOPEA protections.
- Prohibits a creditor from modifying or deferring fees unless they can be proven beneficial to the consumer.
- Establishes that a creditor cannot provide a high-cost mortgage to a consumer unless the creditor has received a certification that the borrower received pre-loan counseling from a HUD-approved entity.
- Prohibits a creditor from knowingly or intentionally engaging in flipping in connection with a high-cost mortgage.

** Note – the term ‘flipping’ means the making of a loan or extension of credit in the form of a high-cost mortgage to a consumer which refinances an existing mortgage when the new loan or extension of credit does not have reasonable, tangible net benefit to the consumer.*

- Requires that creditors and servicers disclose and provide free access to payoff amounts.
- Establishes a creditor may not extend credit to a consumer under a high-cost mortgage without first receiving certification from a counselor that is approved by the Secretary of HUD or at the discretion of the Secretary, a state housing finance authority, that the consumer has received counseling on the advisability of the mortgage. Such counselor shall not be employed by the creditor or an affiliate of the creditor or be affiliated with the creditor.
- Establishes that no counselor may certify that a consumer has received counseling on Establishes that the Federal may prescribe regulations, in the discretion of the Board, defining the term ‘tangible net benefit’ for purposes of this subsection.

Regulations (Section 305)

- Requires the Fed to publish regulations implementing this title and the amendments made by this title in final form before the end of the 6-month period beginning on the date of the enactment of this Act.
- Establishes that no requirement established by the Fed pursuant to this Section is construed as affecting or superseding any requirement under the law of any State with respect to consumer mortgage counseling or education.

Effective Date (Section 306)

- Establishes that the amendments made by this title are effective upon enactment and will apply to mortgages referred to in section 103 (aa) of TILA consummated on or after that date.

TITLE IV – OFFICE OF HOUSING COUNSELING

Establishment of Office of Housing Counseling (Section 402)

- Establishes the Office of Housing Counseling under HUD, headed by a Director appointed by the Secretary.
- Clarifies that the Director is responsible for all homeownership and rental housing counseling programs for HUD, and will establish, coordinate and administer all regulations, requirements, standards, and performance measures that relate to housing counseling, homeownership counseling, mortgage-related counseling, and rental housing counseling.

- Authorizes the Secretary to appoint an advisory committee composed of no more than 12 individuals representing all aspects of the mortgage and real estate industry, including consumers.
- Establishes that members appointed by the Secretary will serve 3-year terms, except that initially, four will be appointed for 1-year terms and four will be appointed for 2-year terms.
- Authorizes the Secretary to reappoint members at his/her discretion.
- Clarifies that the advisory committee has no role in reviewing or awarding housing counseling grants.
- Establishes that counseling services will cover the entire process of homeownership, including refinancing and foreclosure.

Counseling procedures (Section 403)

- Requires the Secretary to establish, coordinate and monitor all HUD counseling procedures, including requirements, standards, and performance measures that relate to homeownership and rental housing.
- Requires the Secretary to provide for the certification of various computer software programs for consumers to use in evaluating different residential mortgage loan proposals.
- Clarifies that the certified software programs will be used to supplement, not replace, housing counseling, and the software programs initially will be used only in connection with the assistance of certified housing counselors.
- Requires the Secretary to develop, implement, and conduct national public service multimedia campaigns to make potentially vulnerable consumers aware of the existence of homeownership counseling.
- Authorizes an appropriation not to exceed \$3 million for national public service multimedia campaigns for fiscal years 2008, 2009, and 2010.
- Requires the Secretary to provide advice and technical assistance to States, units of local government, and non-profit organizations regarding provisions of counseling services.

Grants for Housing Counseling Assistance (Section 404)

- Requires the Secretary to make financial assistance available for homeownership or rental counseling to States, units of local government, and non-profit organizations.
- Requires the Secretary to establish standards and guidelines for assistance eligibility.

- Authorizes appropriations of \$45 million for each of fiscal years 2008 through 2011 for this program.

Requirements to use HUD-certified counselors under HUD Programs (Section 405)

- Requires any homeownership counseling or rental housing counseling administered by HUD to be provided solely by organizations or counselors certified by the Secretary.

Study of defaults and foreclosures (Section 406)

- Establishes that no later than 12 months after the enactment of this legislation, the Secretary will submit to Congress a preliminary report on the root causes of default and foreclosure of home loans and the role of escrow accounts in helping prime and nonprime borrowers to avoid defaults and foreclosures.
- Establishes that no later than 24 months after the enactment of this legislation, the Secretary will submit a final report regarding the results of the study, which will include any recommended legislation relating to the study and recommendations for best practices and for a process to identify populations that need counseling the most.

Updating and Simplification of Mortgage Information Booklet (Section 408)

- Directs the Secretary to prepare a booklet at least once every 5 years to help consumers applying for federally related mortgage loans to understand the nature and costs of real estate settlement services.

TITLE V – MORTGAGE DISCLOSURES UNDER REAL ESTATE SETTLEMENT PROCEDURES

Universal Mortgage Disclosure in Good Faith Estimate of Settlement Services Costs (Section 501)

- Amends RESPA to include a universal mortgage disclosure in good faith estimate of settlement services costs.
- Establishes that the disclosure required under this subsection is a written statement regarding the federally related mortgage loan for which the good faith estimate is made, that consists of statements, appropriately and in good faith completed by the lender in accordance with the terms of the federally related mortgage loan involved in the settlement.
- Establishes that the Secretary, in consultation with the Secretary of Veterans Affairs, the FDIC, and the Director of the OTS, will develop and prescribe a standard form for the disclosure required under this subsection that will be used without variation in all transactions in the United States that involve federally related mortgage loans.
- Establishes that the Secretary will issue regulations prescribing the standard form and the use of such form, as required, no later than the expiration of the 180-day period

beginning upon the date of the enactment of this Act, and such regulations will take effect upon issuance.

AMENDMENTS

- 1. Frank (MA)/Bachus (AL):** The amendment makes a number of technical and conforming changes as well as enhancements to the bill including the following: 1) clarifies the definition of loan originator; 2) narrows the scope of the preemption provision to make it clear that states cannot use or adopt state laws against securitizers/assignees for violations of the national standards or to impose remedies outside of the unique Federal remedy established in the bill, and to make it clear that actions for fraud, misrepresentation, deception, false advertising or civil rights laws are not preempted; 3) clarifies the registration requirements for the Nationwide Mortgage Licensing System and Registry; 4) allows consumers to obtain a cure from assignee or securitizer if creditor or other assignees cease to exist or go bankrupt; 5) clarifies the incentive compensation provision; and 6) adds a monthly disclosure requirement for mortgages., **(10 minutes)**
- 2. Kanjorski (PA)/Biggart (IL)/Capito (WV)/Hodes (NH)/Moore, Gwen (WI):** The amendment, reflecting provisions from H.R. 3837 (The Escrow, Appraisal, and Mortgage Servicing Improvements Act), would better consumer protection by improving mortgage servicing, protecting appraiser independence, ensuring better appraisal quality and regulatory oversight, requiring escrows for mortgages for borrowers who might experience difficulty with repayment, and establishing disclosure for consumers who waive escrow accounts., **(10 minutes)**
- 3. Maloney (NY):** Would require a borrower to receive the option of a mortgage without a prepayment penalty, if they are offered an amendment with a prepayment penalty. Sets the maximum time for a prepayment penalty of 3 years and a maximum prepayment amount of 3% of the loan for the first year, 2% for the second year and 1% for the third year., **(10 minutes)**
- 4. Watt (NC)/Miller, Brad (NC):** This amendment allows for actual damages in the liability section., **(10 minutes)**
- 5. Watt (NC)/Miller, Brad (NC):** The amendment requires the assignee to have policies/procedures and to cure the loan to avoid being liable for rescission., **(10 minutes)**
- 6. Watt (NC)/Miller, Brad (NC):** The amendment changes the irrebuttable presumption under Section 203 to a rebuttable presumption for all mortgages that allow a borrower to defer payment of principal or interest., **(10 minutes)**
- 7. Hensarling (TX):** Amendment would remove the civil liability of a lender and cancel the right of rescission for a borrower in instances when a borrower knowingly lied on their mortgage loan application. , **(10 minutes)**

8. **Watt (NC)/Miller, Brad (NC):** The second-degree amendment to Hensarling #11 adds that the obligor must have had actual knowledge of the false material information for the exemption from liability to take effect., (10 minutes)
9. **Meeks (NY):** The amendment provides that the Nationwide Mortgage Licensing System and Registry shall not directly or indirectly offer educational courses for pre-licensure or continuing education for mortgage originators. In approving courses under this Act, the Nationwide Mortgage Licensing System and Registry shall apply reasonable standards in the review and approval of courses., (10 minutes)
10. **Putnam (FL):** The amendment would direct the GAO to conduct a study to determine the effects the enactment of H.R. 3915 will have on the availability and affordability of credit for homebuyers and mortgage lending, and to submit a report to Congress containing the findings and conclusions within one year of the enactment of the legislation. , (10 minutes)
11. **Brown-Waite (FL):** The amendment excludes loans insured by the Federal Housing Administration from the provisions of the bill., (10 minutes)
12. **Garrett (NJ):** The amendment would strike the rebuttable presumption under section 203, stating that all qualified safe harbor loans that meet the requirements listed in section 203(c)(3)(C) fall under the safe harbor., (10 minutes)
13. **Miller, Brad (NC)/Frank (MA)/Watt (NC):** Allow regulators to fine mortgage originators, assignees and securitizers who more than occasionally (“pattern or practice”) violate the minimum standards for loans established in the bill at least \$1 million, \$25,000 per loan. Proceeds would be held in trust by the US Treasury for the benefit of borrowers who have no other avenue for obtaining a remedy., (10 minutes)
14. **Green, Al (TX):** States that educational requirements include instruction on fraud, consumer protection, and fair lending issues., (10 minutes)
15. **McHenry (NC):** The amendment would strike Title III - High-Cost Mortgages - from the bill., (10 minutes)
16. **Price, Tom (GA):** This amendment would exempt prime loans from the bill., (10 minutes)
17. **Van Hollen (MD):** The amendment requires that in the case of a residential mortgage loan, closing costs may not exceed by more than 10% any estimate of closing costs disclosed to the consumer in advance of closing., (10 minutes)
18. **Sutton (OH):** This amendment would require loan creditors or servicers to provide a written notice to consumers with hybrid adjustable rate mortgages six

months before their interest rates are due to reset. This notice would state the new interest rate, an explanation of how the new interest rate would be determined, the creditor's or servicer's good faith estimate of the monthly payment that will apply after the reset, a list of alternatives consumers may pursue before the date of adjustment or reset, and contact information for local HUD-approved housing counseling agencies and the state housing finance authority., **(10 minutes)**

ADDITIONAL VIEWS

The Statement of Administration Policy (SAP) does not contain a veto threat, but does outline several concerns with the bill as drafted. The Administration is concerned that some provisions of the bill “could overly constrict the primary and secondary markets for mortgage finance.” ([SAP for H.R. 3915](#))

STAFF CONTACT

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