



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

CRL Policy Brief

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THE MILLER-WATT-FRANK BILL

Congressman Miller, Congressman Watt, and Chairman Frank introduced the “Mortgage Reform and Anti-Predatory Lending Act of 2007” on October 22, 2007. The proposed legislation addresses many abusive lending practices that contributed to today’s foreclosure crisis, including reckless underwriting practices, subprime prepayment penalties, and yield-spread premiums. However, it is critical that the details of remedy and enforcement provisions are strengthened in order to ensure protections are meaningful and that industry participants, including the secondary market, take their responsibility to police the market seriously and do not encourage originators to make abusive loans in the future.

The bill includes many important protections that are critical to restoring responsible underwriting to the market

- Establishes a “duty of care” to borrowers. Mortgage originators must act in the best interest of the consumer and must present borrowers with loan products that are appropriate for the borrower’s circumstances.
- Requires subprime lenders to determine whether the borrower has the ability to repay the loan. Must take into account fully-indexed rate and fully-amortized payment on adjustable rate loans; must consider amounts for taxes and insurance; must verify and document information.
- Prohibits abusive loan flipping - requires subprime creditors to determine that a refinanced loan will provide a net tangible benefit to the consumer.

The bill also prohibits several abusive loan terms and practices

- **Prohibits subprime prepayment penalties.** Limits prepayment penalties on conventional loans.
- **Prohibits yield-spread premiums** and other incentive compensation that depends on the terms of the loan. Also instructs HUD to issue anti-steering regulations.
- **Prohibits mandatory arbitration** on any residential mortgage loan.
- **Prohibits single premium credit insurance** on any residential mortgage.
- **Prohibits selling negatively amortizing loan to first time homebuyer** without evidence of counseling from HUD-certified homeownership counseling.
- **Includes special protections for extremely high-cost mortgages.**
 - Prohibits the following on high-cost loans: balloon payments; recommending or encouraging default; excessive late fees; call provisions; financing any points and fees or prepayment penalties; abusive modification or deferral fees; excessive fees for receiving a payoff statement.
 - Borrower must receive pre-loan counseling before receiving a high-cost loan.

- High-cost loans refers to a mortgage with very high points and fees (exceeding 5% of loan amount, using a comprehensive definition of fees such as YSPs and PPPs) or APR (rates as of today around 13% or 15% on junior liens).

Remedies for key provisions are unclear and may not be sufficient to deter predatory behavior

- It is unclear whether there are sufficient remedies in the bill for violations of mortgage originator duties to the borrower. Current proposals may provide limited damages, but not enough to correct harms done by abusive loans. For example, while damages up to 3 times the brokers compensation are authorized for violations of the steering provision, there is no mechanism for consumers to get the value of the better loan terms they should have received absent steering.
- While the bill provides for some assignee liability, it includes broad safe harbors that could operate as loopholes for many holders of loans. Since most mortgage loans are sold on the secondary market, it is essential that secondary market liability create incentives for the market to police itself. It is not clear that the assignee liability is sufficient to achieve that goal. The past few months in the subprime market crisis have made it clear that market-based incentives are not enough to prevent abusive lending practices—action by regulators is needed. For example, it appears that fixed rate subprime loans will almost always qualify for the “safe harbor.”
- In addition, even when the holder of the loan is not in a “safe harbor”, only limited remedies will be available for borrowers who have been harmed by predatory lending. Most of those instances will be where the borrower is in foreclosure, which may have the perverse effect of encouraging more foreclosures, rather than preventing them and helping borrowers before it is too late.
- [As currently drafted, the bill does not appear to provide even remedies such as rescission it purports to include, but we understand that will be corrected.]

About the Center for Responsible Lending

The Center for Responsible Lending (CRL) is a national nonprofit, nonpartisan research and policy organization dedicated to protecting home ownership and family wealth by working to eliminate abusive financial practices. CRL is affiliated with Self-Help, one of the nation’s largest community development financial institutions.

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