

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.

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## 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

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## 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.

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.**

4 This Act may be cited as the "Borrower's Protection  
5 Act of 2007".

1 **SEC. 2. MORTGAGE ORIGINATOR REQUIREMENTS.**

2 The Truth in Lending Act (15 U.S.C. 1601 et seq.)  
3 is amended by inserting after section 129 the following  
4 new section:

5 **“SEC. 129A. DUTIES OF MORTGAGE ORIGINATORS.**

6 “(a) DEFINITIONS.—As used in this section—

7 “(1) the term ‘home mortgage loan’ means an  
8 extension of credit secured by or to be secured by a  
9 security interest in the principal dwelling of the obli-  
10 gor;

11 “(2) the term ‘mortgage broker’ means a per-  
12 son who, for compensation or in anticipation of com-  
13 pensation, arranges or negotiates, or attempts to ar-  
14 range or negotiate, home mortgage loans or commit-  
15 ments for such loans, or refers applicants or pro-  
16 spective applicants to creditors, or selects or offers  
17 to select creditors to whom requests for credit may  
18 be made;

19 “(3) the term ‘mortgage originator’ means—

20 “(A) any creditor or other person, includ-  
21 ing a mortgage broker, who, for compensation  
22 or in anticipation of compensation, engages ei-  
23 ther directly or indirectly in the acceptance of  
24 applications for home mortgage loans, sollicita-  
25 tion of home mortgage loans on behalf of bor-  
26 rowers, negotiation of terms or conditions of

1 home mortgage loans on behalf of borrowers or  
2 lenders, or negotiation of sales of existing home  
3 mortgage loans to institutional or non-institu-  
4 tional lenders; and

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

7 “(4) the term ‘qualifying bond’ means a bond  
8 equal to not less than 1 percent of the aggregate  
9 value of all homes appraised by an appraiser of real  
10 property in connection with a home mortgage loan  
11 in the calendar year preceding the date of the trans-  
12 action, with respect to which—

13 “(A) the bond shall inure first to the ben-  
14 efit of the homeowners who have claims against  
15 the appraiser under this title or any other ap-  
16 plicable provision of law, and second to the ben-  
17 efit of originating creditors that complied with  
18 their duty of good faith and fair dealing in ac-  
19 cordance with this title; and

20 “(B) any assignee or subsequent transferee  
21 or trustee shall be a beneficiary of the bond,  
22 only if the originating creditor qualified for  
23 such treatment; and

24 “(5) the term ‘rate spread mortgage trans-  
25 action’ means a home mortgage loan that has an an-

1 nual percentage rate of interest that equals or ex-  
2 ceeds the rate that would require reporting under  
3 the Home Mortgage Disclosure Act (12 U.S.C. 2801  
4 et seq.) as a rate spread loan, without regard to  
5 whether such loan is otherwise subject to the Home  
6 Mortgage Disclosure Act.

7 “(b) STANDARD OF CARE.—

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

14 “(2) FAIR DEALING.—Each mortgage origi-  
15 nator shall, in addition to the duties imposed by oth-  
16 erwise applicable provisions of State or Federal law,  
17 with respect to each home mortgage loan in which  
18 the mortgage originator is involved—

19 “(A) act with reasonable skill, care, and  
20 diligence; and

21 “(B) act in good faith and with fair deal-  
22 ing in any transaction, practice, or course of  
23 business associated with the transaction.

24 “(c) ASSESSMENT OF ABILITY TO REPAY.—

1           “(1) IN GENERAL.—Each mortgage originator  
2 shall, before entering into or otherwise facilitating  
3 any home mortgage loan, verify the reasonable abil-  
4 ity of the borrower to pay the principal and interest  
5 on the loan, and any real estate taxes and home-  
6 owners insurance fees and premiums.

7           “(2) VARIABLE MORTGAGE RATES.—In the case  
8 of a home mortgage loan with respect to which the  
9 applicable rate of interest may vary, for purposes of  
10 paragraph (1), the ability to pay shall be determined  
11 based on the maximum possible monthly payment  
12 that could be due from the borrower during the first  
13 7 years of the loan term, which amount shall be cal-  
14 culated by—

15           “(A) using the maximum interest rate al-  
16 lowable under the loan; and

17           “(B) assuming no default by the borrower,  
18 a repayment schedule which achieves full amor-  
19 tization over the life of the loan.

20           “(3) REQUIRED VERIFICATION DOCUMENTS.—

21           “(A) IN GENERAL.—For purposes of para-  
22 graph (1), a mortgage originator shall base a  
23 determination of the ability to pay on—

24           “(i) documentation of the income and  
25 financial resources of the borrower, includ-

1           ing tax returns, payroll receipts, bank  
2           records, or other similarly reliable docu-  
3           ments; and

4           “(ii) the debt-to-income ratio and re-  
5           sidual income of the borrower, as deter-  
6           mined under section 36.4337 of title 38 of  
7           the Code of Federal Regulations, or any  
8           successor thereto.

9           “(B) LIMITATION.—A statement provided  
10          by the borrower of the income and financial re-  
11          sources of the borrower, without other docu-  
12          mentation referred to in this paragraph, is not  
13          sufficient verification for purposes of assessing  
14          the ability of the consumer to pay.

15         “(d) RATE SPREAD MORTGAGES.—

16                 “(1) ESCROW ACCOUNT REQUIRED.—In the  
17                 case of a rate spread mortgage transaction, the obli-  
18                 gor shall be required to make monthly payments into  
19                 an escrow account established by the mortgage origi-  
20                 nator for the purpose of paying taxes, hazard insur-  
21                 ance premiums, and, if applicable, flood insurance  
22                 premiums.

23                 “(2) EXCEPTION.—This paragraph does not  
24                 apply in any case in which the mortgage originator  
25                 reasonably believes that, following the loan closing,

1 the obligor will be required, or will continue to be re-  
2 quired, to make escrow payments described in para-  
3 graph (1) on the property securing the loan in con-  
4 nection with another loan secured by the same prop-  
5 erty.

6 “(3) LENDER AND BROKER LIABILITY.—In any  
7 case in which a mortgage broker sells or delivers a  
8 rate spread mortgage loan to a lender, the lender  
9 shall be liable for the acts, omissions, and represen-  
10 tations made by the mortgage broker in connection  
11 with that mortgage loan.

12 “(e) STEERING PROHIBITED.—

13 “(1) IN GENERAL.—In connection with a home  
14 mortgage loan, a mortgage originator may not steer,  
15 counsel, or direct a consumer to rates, charges, prin-  
16 cipal amount, or prepayment terms that are not rea-  
17 sonably advantageous to the consumer, in light of all  
18 of the circumstances associated with the transaction,  
19 including the characteristics of the property that se-  
20 cures or will secure the extension of credit and the  
21 loan terms for which the consumer qualifies.

22 “(2) DUTIES TO CONSUMERS.—If unable to  
23 suggest, offer, or recommend to a consumer a rea-  
24 sonably advantageous home loan, a mortgage origi-  
25 nator shall—

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

8           “(B) disclose to a consumer—

9           “(i) that the creditor does not offer a  
10 home mortgage loan that would be reason-  
11 ably advantageous to a consumer, but that  
12 other creditors may offer such a loan; and

13           “(ii) the reasons that the products  
14 and services offered by the mortgage origi-  
15 nator are not available to or reasonably ad-  
16 vantageous for the consumer.

17           “(3) PROHIBITED CONDUCT.—In connection  
18 with a home mortgage loan, a mortgage originator  
19 may not—

20           “(A) mischaracterize the credit history of a  
21 consumer or the home loans available to a con-  
22 sumer;

23           “(B) mischaracterize or suborn  
24 mischaracterization of the appraised value of  
25 the property securing the extension of credit; or



1           “(C) if unable to suggest, offer, or rec-  
2           ommend to a consumer a reasonably advan-  
3           tageous home mortgage loan, discourage a con-  
4           sumer from seeking a home mortgage loan from  
5           another creditor or with another mortgage  
6           originator.

7           “(4) RULE OF CONSTRUCTION.—Nothing in  
8           this subsection shall be deemed to prohibit a mort-  
9           gage originator from providing a consumer with ac-  
10          curate, unbiased, general information about home  
11          mortgage loans, underwriting standards, ways to im-  
12          prove credit history, or any other matter relevant to  
13          a consumer.

14          “(f) GOOD FAITH AND FAIR DEALING IN APPRAISAL  
15          PROCESS.—

16                 “(1) IN GENERAL.—No mortgage originator  
17                 may enter into a home mortgage loan with respect  
18                 to which the mortgage originator has reason to be-  
19                 lieve that, with respect to the appraisal of the value  
20                 of the property securing the loan—

21                         “(A) the appraiser failed to act in good  
22                         faith and fair dealing with respect to the con-  
23                         sumer in connection with the appraisal;

24                         “(B) the appraisal was conducted other  
25                         than in accordance with all applicable State and

1 Federal standards required of certified appraisers,  
2 or was otherwise not accurate and reasonable;  
3

4 “(C) the appraiser had a direct or indirect  
5 interest in the property or the transaction;

6 “(D) the appraiser charged, sought, or received  
7 compensation for the appraisal, and the  
8 appraisal was not covered by a qualifying bond;  
9 or

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

15 “(2) PROHIBITED INFLUENCE.—No mortgage  
16 originator may, with respect to a home mortgage  
17 loan, in any way—

18 “(A) seek to influence an appraiser or otherwise  
19 to encourage a targeted value in order to  
20 facilitate the making or pricing of the home  
21 mortgage loan; or

22 “(B) select an appraiser on the basis of an  
23 expectation that such appraiser would provide a  
24 targeted value in order to facilitate the making  
25 or pricing of the home mortgage loan.

1           “(3) LIMITATION ON DEFENSES.—It shall not  
2           be a defense to enforcement of the requirements of  
3           this subsection that the mortgage originator used  
4           another person in the appraisal process or to review  
5           the appraisal process.

6           “(4) NOTICE OF APPRAISAL.—In any case in  
7           which an appraisal is performed in connection with  
8           a home mortgage loan, the mortgage originator shall  
9           provide a copy of the appraisal report to an appli-  
10          cant for a home mortgage loan, whether credit is  
11          granted, denied, or the application was withdrawn.”.

12 **SEC. 3. CONFORMING AND CLERICAL AMENDMENTS.**

13          The Truth in Lending Act (15 U.S.C. 1601 et seq.)  
14 is amended—

15               (1) in section 103(u) (15 U.S.C. 1602(u)), by  
16               striking “disclosures required by section 129(a)”  
17               and inserting “provisions of section 129 and 129A”;

18               (2) in section 130 (15 U.S.C. 1640) by insert-  
19               ing “or 129A” after “section 129” each place that  
20               term appears; and

21               (3) in the table of sections for chapter 2 (15  
22               U.S.C. 1631 et seq.), by inserting after the item re-  
23               lating to section 129 the following:

“129A. Duties of mortgage originators.”.

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