

110TH CONGRESS
1ST SESSION

S. 1222

To stop mortgage transactions which operate to promote fraud, risk, abuse,
and under-development, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 25, 2007

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

A BILL

To stop mortgage transactions which operate to promote
fraud, risk, abuse, and under-development, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Stopping Mortgage Transactions which Operate to Pro-
6 mote Fraud, Risk, Abuse, and Underdevelopment Act” or
7 the “STOP FRAUD Act”.

8 (b) TABLE OF CONTENTS.—The table of contents for
9 this Act is as follows:

Sec. 1. Short title; table of contents.
 Sec. 2. Mortgage fraud.
 Sec. 3. Mandatory reporting requirements.
 Sec. 4. Law enforcement and industry communication.
 Sec. 5. Debarred or censured mortgage professional database.
 Sec. 6. Housing counseling.
 Sec. 7. State appraisal demonstration projects.
 Sec. 8. Law enforcement grants to State and local law enforcement agencies.
 Sec. 9. Additional DOJ funding.
 Sec. 10. Additional rights of borrowers.
 Sec. 11. Report to Congress.

1 SEC. 2. MORTGAGE FRAUD.

2 (a) IN GENERAL.—Chapter 63 of title 18, United
 3 States Code, is amended by adding at the end the fol-
 4 lowing:

5 “§ 1351. Mortgage fraud

6 “(a) IN GENERAL.—It shall be unlawful for any
 7 mortgage professional to knowingly execute, or attempt to
 8 execute, a scheme or artifice—

9 “(1) to defraud any natural person, financial
 10 institution, or purchaser of consumer credit or an in-
 11 terest in consumer credit in connection with the
 12 offer or extension of consumer credit (as such term
 13 is defined in subsections (e) and (h) under section
 14 103 of the Truth in Lending Act (15 U.S.C. 1602(e)
 15 and (h))), which credit is, is to be, or is portrayed
 16 as being secured by an interest—

17 “(A) in real property; or

18 “(B) in personal property used or expected
 19 to be used as the principal dwelling (as such
 20 term is defined under section 103(v) of the

1 Truth in Lending Act (15 U.S.C. 1602(v))) of
 2 the natural person to whom such consumer
 3 credit is offered or extended; or

4 “(2) to obtain, by means of false or fraudulent
 5 pretenses, representations, or promises, any money
 6 or property, including without limitation in the form
 7 of fees or charges, from a natural person in connec-
 8 tion with an extension of consumer credit which is,
 9 is to be, or is portrayed as being secured by an in-
 10 terest—

11 “(A) in real property; or

12 “(B) in personal property used or expected
 13 to be used as the principal dwelling of such nat-
 14 ural person;

15 “(b) PENALTIES.—

16 “(1) CRIMINAL PENALTIES.—Any mortgage
 17 professional who violates subsection (a) shall be
 18 fined not more than \$5,000,000, or imprisoned not
 19 more than 35 years, or both.

20 “(2) CIVIL PENALTIES.—Any mortgage profes-
 21 sional who violates subsection (a) shall be liable for
 22 an amount equal to the sum of all finance charges
 23 and fees paid or payable by the natural person, fi-
 24 nancial institution, or purchaser who was defrauded

1 unless the mortgage professional demonstrates that
 2 such violation is not material.

3 “(c) PRIVATE RIGHT OF ACTION BY PERSONS AG-
 4 GRIEVED.—

5 “(1) IN GENERAL.—Any person aggrieved by a
 6 violation of this section, or any regulation under this
 7 section may, but shall not be required to, file suit in
 8 any district court of the United States or any State
 9 court having jurisdiction of the parties to such
 10 suit—

11 “(A) without respect to the amount in con-
 12 troversy;

13 “(B) without regard to the citizenship of
 14 the parties; and

15 “(C) without regard to exhaustion of any
 16 administrative remedies.

17 “(2) REMEDIES.—Any court in which a civil ac-
 18 tion has been brought under paragraph (1) may—

19 “(A) award damages and appropriate de-
 20 claratory and injunctive relief for each violation
 21 of this section; and

22 “(B) provide such additional relief as the
 23 court deems appropriate, including the award of
 24 court costs, investigative costs, and reasonable
 25 attorneys’ fees incurred by persons aggrieved.

1 “(d) RULE OF CONSTRUCTION.—Nothing in this sec-
 2 tion shall be construed to modify, lessen, or otherwise af-
 3 fect any other provision of this title relating to the rights
 4 afforded to financial institutions or purchasers of con-
 5 sumer credit or interests in consumer credit.

6 “(e) DEFINITION.—As used in this section, the term
 7 ‘mortgage professional’ includes real estate appraisers,
 8 real estate accountants, real estate attorneys, real estate
 9 brokers, mortgage brokers, mortgage underwriters, mort-
 10 gage processors, mortgage settlement companies, mort-
 11 gage title companies, mortgage loan originators, and any
 12 other provider of professional services engaged in the
 13 mortgage process.”.

14 (b) TABLE OF SECTIONS.—The table of sections for
 15 chapter 63 of title 18, United States Code, is amended
 16 by inserting after the item relating to section 1350 the
 17 following:

“1351. Mortgage fraud.”.

18 (c) CONFORMING AMENDMENT.—Section 3293(2) of
 19 title 18, United States Code, is amended by striking “or
 20 1343” and inserting “, 1343, or 1351”.

21 **SEC. 3. MANDATORY REPORTING REQUIREMENTS.**

22 (a) DEFINITION OF FINANCIAL INSTITUTION.—Sec-
 23 tion 5312(a)(2)(U) of title 31, United States Code, is
 24 amended by—

1 (1) inserting “companies and other legal enti-
2 ties” after “persons”;

3 (2) inserting “, transactions,” after “closings”;
4 and

5 (3) inserting after “settlements” the following:
6 “, including the Federal National Mortgage Associa-
7 tion, the Government National Mortgage Associa-
8 tion, the Federal Home Loan Mortgage Corporation,
9 mortgage appraisers, real estate accountants, real
10 estate attorneys, real estate brokers, mortgage un-
11 derwriters, mortgage processors, mortgage settle-
12 ment and title companies, mortgage brokers, mort-
13 gage loan originators, and any other mortgage pro-
14 fessional engaged in the mortgage industry”.

15 (b) REGULATIONS.—

16 (1) IN GENERAL.—Not later than 1 year after
17 the date of enactment of this Act, the Secretary of
18 the Treasury shall issue regulations to implement
19 the amendments made in subsection (a).

20 (2) CONTENT OF REGULATION.—A regulation
21 required under paragraph (1) shall—

22 (A) include a requirement that any sus-
23 picious activity by an individual or entity de-
24 scribed in section 5312(a)(2)(U) of title 31,

1 United States Code, be reported to the Sec-
2 retary of the Treasury; and

3 (B) ensure compliance by an individual or
4 entity described in such section with the re-
5 quirement described under subparagraph (A),
6 while simultaneously seeking to avoid any un-
7 necessary duplication of paperwork or other ad-
8 ministrative details.

9 (c) AUTHORIZATION OF APPROPRIATIONS.—There
10 are authorized to be appropriated such sums as are nec-
11 essary to implement the regulations issued under sub-
12 section (b).

13 **SEC. 4. LAW ENFORCEMENT AND INDUSTRY COMMUNICA-**
14 **TION.**

15 (a) IN GENERAL.—Not later than 18 months after
16 the date of enactment of this Act, the Attorney General,
17 in consultation with the Secretary of the Treasury, shall
18 establish a system by which mortgage brokers, lenders,
19 title company employees, mortgage appraisers, securities
20 and bond rating agencies, and other authorized mortgage
21 professionals may register and receive updates from Fed-
22 eral law enforcement agencies on—

23 (1) suspicious activity trends in the mortgage
24 industry; and

25 (2) mortgage fraud-related convictions.

1 (b) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated such sums as are nec-
 3 essary to establish and maintain the system required
 4 under subsection (a).

5 **SEC. 5. DEBARRED OR CENSURED MORTGAGE PROFES-**
 6 **SIONAL DATABASE.**

7 (a) ESTABLISHMENT.—

8 (1) IN GENERAL.—Not later than 18 months
 9 after the date of enactment of this Act, the Attorney
 10 General shall establish a Debarred or Censured
 11 Mortgage Professional Database that may be
 12 accessed by authorized depository institutions, mort-
 13 gage lenders, mortgage professionals, securities and
 14 bond rating agencies, and consumers to determine
 15 the Federal and State bar status of mortgage pro-
 16 fessionals regulated by any Federal or State agency.

17 (2) PRIVATE CERTIFICATION BOARDS.—Any
 18 widely accepted private certification board shall have
 19 authority to access, maintain, and update the
 20 Debarred or Censured Mortgage Professional Data-
 21 base established in paragraph (1) for purposes of
 22 adding or removing the information of any mortgage
 23 professional contained in such Database.

24 (3) WIDELY ACCEPTED PRIVATE CERTIFI-
 25 CATION BOARD.—Not later than 18 months after the

1 date of enactment of this Act, the Attorney General,
2 in consultation with the Secretary of the Treasury,
3 shall—

4 (A) determine the definition of the term
5 “widely accepted private certification board”;
6 and

7 (B) issue procedures and guidance on how
8 officers, agents, and employees of such boards
9 shall conduct the responsibilities described in
10 paragraph (2).

11 (4) PUBLIC AVAILABILITY.—The Attorney Gen-
12 eral shall make the Debarred or Censured Mortgage
13 Professional Database established in paragraph (1)
14 available to the public on the Internet, without fee
15 or other access charge, in a searchable, sortable, and
16 downloadable manner.

17 (b) IMMUNITY FROM CIVIL LIABILITY.—Any officer,
18 agent, or employee of a widely accepted private certifi-
19 cation board, who in good faith follows the procedures and
20 guidance set forth under subsection (a)(3)(B), shall not
21 be liable in any court of any State or the United States
22 to any mortgage professional or other person—

23 (1) for carrying out the responsibilities de-
24 scribed in subsection (a)(2); or

1 (2) for nondisclosure to that mortgage profes-
2 sional or other person that such conduct occurred.

3 (c) WHISTLEBLOWER PROTECTION.—

4 (1) IN GENERAL.—No officer, agent, or em-
5 ployee of a widely accepted private certification
6 board may be discharged, demoted, threatened, sus-
7 pended, harassed, or in any other manner discrimi-
8 nated against in the terms and conditions of the em-
9 ployment of such officer, agent, or employee because
10 of any lawful act done by such officer, agent, or em-
11 ployee to provide information, cause information to
12 be provided, or otherwise assist in an investigation
13 regarding any—

14 (A) possible violation of this section, in-
15 cluding not following the procedures and guid-
16 ance set forth under subsection (a)(3)(B); or

17 (B) other misconduct, by any other officer,
18 agent, or employee of the board.

19 (2) CIVIL ACTION.—An officer, agent, or em-
20 ployee injured by a violation of paragraph (1) may,
21 in a civil action, obtain appropriate relief.

22 (d) AUTHORIZATION OF APPROPRIATIONS.—There
23 are authorized to be appropriated such sums as are nec-
24 essary to establish and maintain the database required
25 under subsection (a).

1 **SEC. 6. HOUSING COUNSELING.**

2 Section 106 of the Housing and Urban Development
3 Act of 1968 (12 U.S.C. 1701x), is amended by adding
4 at the end the following:

5 “(g) COUNSELING FOR MORTGAGE FRAUD.—

6 “(1) IN GENERAL.—The Secretary is authorized
7 to provide, or contract with public or private organi-
8 zations to provide, information, advice, counseling,
9 and technical assistance to tenants, homeowners,
10 and other consumers with respect—

11 “(A) to mortgage fraud, as such activity is
12 described in section 1351 of title 18, United
13 States Code; and

14 “(B) to any other activities or practices
15 that the Secretary determines are likely to in-
16 crease the risk of foreclosure by such individ-
17 uals.

18 “(2) PREFERENCES.—In distributing any funds
19 authorized under paragraph (5), the Secretary shall
20 give preference to—

21 “(A) organizations in those States with the
22 highest rates of mortgage fraud, as such rates
23 are determined by—

24 “(i) the Director of the Federal Bu-
25 reau of Investigation; and

26 “(ii) mortgage industry statistics;

1 “(B) those nonprofit organizations—

2 “(i) approved by the Secretary under
3 subsection (d); and

4 “(ii) that—

5 “(I) are experienced in the provi-
6 sion of prepurchase and foreclosure-
7 prevention counseling; and

8 “(II) have a demonstrated record
9 of success in the provision of such
10 counseling services; and

11 “(C) organizations that provide—

12 “(i) in-person prepurchase and fore-
13 closure-prevention counseling; and

14 “(ii) a brief assessment and review of
15 the financial mortgage documents of a ten-
16 ant, homeowner, or other consumer.

17 “(3) DUTIES OF THE SECRETARY.—The Sec-
18 retary shall—

19 “(A) monitor, record, track, and evaluate
20 the performance of each public or private orga-
21 nization that is a recipient of a grant under
22 subsection (a); and

23 “(B) make each evaluation under subpara-
24 graph (A) available to the public on the Inter-

1 net, without fee or other access charge, in a
2 searchable, sortable, and downloadable manner.

3 “(4) REPORT.—

4 “(A) IN GENERAL.—Each public or private
5 organization that is a recipient of a grant under
6 subsection (a) shall report to the Secretary, on
7 a quarterly basis, on any instances or occur-
8 rences of fraud or deceptive practices by mort-
9 gage professionals uncovered in the course of
10 providing the prepurchase and foreclosure-pre-
11 vention counseling required under this section.

12 “(B) USE BY THE SECRETARY.—Based
13 upon the reports submitted under subparagraph
14 (A), the Secretary shall—

15 “(i) identify and evaluate trends in
16 the use and frequency of fraud or deceptive
17 practices in the mortgage industry;

18 “(ii) identify new fraudulent schemes
19 or deceptive practices, and forward to the
20 appropriate Federal law enforcement agen-
21 cy information relating to such new
22 schemes and practices; and

23 “(iii) establish, as needed, new re-
24 quirements to train officers, agents, or em-
25 ployees of any public or private organiza-

1 tion that is a recipient of a grant under
 2 subsection (a) to identify such schemes
 3 and practices, including by providing edu-
 4 cational material to such officers, agents,
 5 or employees on such schemes and prac-
 6 tices.

7 “(5) AUTHORIZATION OF APPROPRIATIONS.—
 8 There are authorized to be appropriated
 9 \$25,000,000, to implement the provisions of this
 10 subsection.”.

11 **SEC. 7. STATE APPRAISAL DEMONSTRATION PROJECTS.**

12 (a) IN GENERAL.—Not later than 18 months after
 13 the date of enactment of this Act, the Secretary of Hous-
 14 ing and Urban Development shall provide grants to State
 15 appraisal agencies to improve the monitoring and enforce-
 16 ment of housing appraisal regulations in that State.

17 (b) APPLICATION.—Each State appraisal agency
 18 seeking a grant under this section shall submit an applica-
 19 tion to the Secretary of Housing and Urban Development
 20 at such time, in such manner, and containing such infor-
 21 mation as the Secretary may require.

22 (c) PREFERENCE FOR STATES WITH HIGHER INCI-
 23 DENTS OF MORTGAGE FRAUD.—In distributing any grant
 24 amounts authorized under this section, the Secretary of
 25 Housing and Urban Development shall give preference to

1 those States with the highest rates of mortgage fraud, as
2 such rates are determined by—

3 (1) the Director of the Federal Bureau of In-
4 vestigation; and

5 (2) mortgage industry statistics.

6 (d) AUTHORIZATION OF APPROPRIATIONS.—There
7 are authorized to be appropriated \$10,000,000, to imple-
8 ment the provisions of this section.

9 **SEC. 8. LAW ENFORCEMENT GRANTS TO STATE AND LOCAL**
10 **LAW ENFORCEMENT AGENCIES.**

11 (a) IN GENERAL.—Not later than 18 months after
12 the date of enactment of this Act, the Attorney General
13 shall provide grants to assist State and local law enforce-
14 ment agencies in—

15 (1) establishing and improving mortgage fraud
16 task forces; and

17 (2) improving communications regarding mort-
18 gage fraud cases between such agencies and other
19 Federal, State and local law enforcement agencies.

20 (b) APPLICATION.—Each State or local law enforce-
21 ment agency seeking a grant under this section shall sub-
22 mit an application to the Attorney General at such time,
23 in such manner, and containing such information as the
24 Attorney General may require.

1 (c) AUTHORIZATION OF APPROPRIATIONS.—There
 2 are authorized to be appropriated \$40,000,000, to imple-
 3 ment the provisions of this section.

4 **SEC. 9. ADDITIONAL DOJ FUNDING.**

5 In addition to any other amounts otherwise author-
 6 ized to be appropriated under this Act, there are author-
 7 ized to be appropriated to the Attorney General
 8 \$5,000,000, to increase mortgage fraud investigation ef-
 9 forts undertaken by the Department of Justice.

10 **SEC. 10. ADDITIONAL RIGHTS OF BORROWERS.**

11 (a) BORROWERS RIGHTS IN FORECLOSURE PRO-
 12 CEEDINGS.—

13 (1) IN GENERAL.—Any creditor making a
 14 subprime mortgage related loan who has the legal
 15 right to foreclosure shall use the judicial foreclosure
 16 procedures, or if no such judicial proceeding exists
 17 the appropriate administrative proceeding, of the
 18 State where the property securing the loan is located
 19 if—

20 (A) the creditor is a party to a home loan
 21 contract described in paragraph (3); and

22 (B) the property to be secured is the prin-
 23 cipal residence (as determined by the Secretary
 24 of Housing and Urban Development) of the
 25 borrower.

1 (2) AFFIRMATIVE DEFENSE.—In any fore-
 2 closure proceeding described in paragraph (1), the
 3 borrower may assert as an affirmative defense
 4 against any party to such contract, or any successor
 5 or assignee of such party—

6 (A) that such contract was the result of
 7 fraud or deceptive practices and as result of
 8 such fraud and deception that the terms of such
 9 contract are void; and

10 (B) any other claim or defense to accelera-
 11 tion and foreclosure, including any claim or de-
 12 fense based on a violation of this Act, though
 13 no such claim or defense shall be deemed a
 14 compulsory counterclaim.

15 (3) HOME LOAN CONTRACT.—A home loan con-
 16 tract described in paragraph (1) is a contract that—

17 (A) does not include a fully-disclosed state-
 18 ment by the lender that the lending institution
 19 or the authorized representative or agent of
 20 such institution has evaluated and affirmed the
 21 ability of the individual to repay the loan based
 22 upon, at minimum, the maximum monthly pay-
 23 ments that could be due during the first 7 years
 24 of the loan term, which shall be calculated with
 25 reference to the maximum interest rate allow-

1 able under the loan being offered based on a
2 fully amortizing repayment schedule, taking
3 into account negative amortization and escrows
4 for taxes and insurance;

5 (B) does not contain a statement, the for-
6 mat of which shall be determined by the Sec-
7 retary of Housing and Urban Development,
8 with a plain language summary providing the
9 borrower with a calculation of—

10 (i) the maximum monthly required
11 minimum payment the borrower could face
12 under the terms of the loan for each of the
13 first 10 years of the loan in order to keep
14 the loan in good standing, or if the bor-
15 rower is receiving more than 1 loan, the
16 same information for each loan separately
17 and for the total of all of the loans to-
18 gether; and

19 (ii) how much it would cost the bor-
20 rower to pay off the loan at the end of
21 each of the first 10 years if the borrower
22 makes the minimum required payments to
23 keep the loan in good standing;

24 (C) was underwritten based only on the
25 stated income of the individual, without third-

1 party verification of all sources of income and
 2 assets of the individual, including by an exam-
 3 ination of the individual's tax returns, payroll
 4 receipts, bank records, or other reliable docu-
 5 mentation; or

6 (D) includes loan prepayment penalties
 7 that are applicable for prepayments made be-
 8 yond 2 years after the loan origination date, be-
 9 yond the initial interest rate adjustment period
 10 stated in such contract, or whichever is less.

11 (b) COORDINATION WITH OTHER LAW.—No provi-
 12 sion of this section shall be construed as annulling, alter-
 13 ing, affecting, or superseding any Federal law, or the laws
 14 of any State, relating to foreclosure proceedings in connec-
 15 tion with home loans, except to the extent that those laws
 16 are inconsistent with the provisions of this section, and
 17 then only to the extent of the inconsistency.

18 (c) APPLICABILITY.—This section shall apply to all
 19 home loan contracts entered into on, or after the date that
 20 is 90 days after the date of the enactment of this Act and
 21 to all controversies arising after such date.

22 (d) DEFINITIONS.—As used in this section:

23 (1) HOME LOAN.—The term “home loan”
 24 means a loan secured by a mortgage or lien on resi-
 25 dential property.

1 (2) RESIDENTIAL PROPERTY.—The term “resi-
 2 dential property” means a 1–4 family, owner-occu-
 3 pied residence, including a 1-family unit in a condo-
 4 minium project, a membership interest and occu-
 5 pancy agreement in a cooperative housing project,
 6 and a manufactured home and the lot on which the
 7 home is situated.

8 (3) SUBPRIME MORTGAGE RELATED LOAN.—

9 (A) IN GENERAL.—The term “subprime
 10 mortgage related loan” means with respect to a
 11 home loan, that the borrower under the loan, or
 12 the loan terms, exhibit characteristics that indi-
 13 cate that the loan is subject to a significantly
 14 higher risk of default than federally related
 15 mortgage loans made to borrowers at prime
 16 lending rates.

17 (B) REGULATIONS.—The Secretary of
 18 Housing and Urban Development shall pre-
 19 scribe regulations to carry out this paragraph,
 20 which shall specify characteristics referred to in
 21 subparagraph (A) that indicate a higher risk of
 22 default and shall establish criteria based on
 23 such characteristics for determining whether a
 24 home loan is a subprime loan. Such characteris-
 25 tics shall include—

- 1 (i) higher loan fees or penalties;
- 2 (ii) higher interest rates;
- 3 (iii) higher debt-to-income ratios;
- 4 (iv) a history of loan delinquency;
- 5 (v) higher loan-to-value ratios;
- 6 (vi) lower credit scores or other credit
- 7 ratings;
- 8 (vii) more recent declaration of bank-
- 9 ruptcy;
- 10 (viii) lack of a credit history;
- 11 (ix) no-documentation or low-docu-
- 12 mentation loan underwriting; and
- 13 (x) any other factors that the Sec-
- 14 retary considers appropriate.

15 **SEC. 11. REPORT TO CONGRESS.**

16 Not later than 120 days after the date of enactment
 17 of this Act, the Comptroller General of the United States
 18 shall survey, evaluate, and report to Congress on State
 19 mortgage lending practices and regulations related to—

- 20 (1) mortgage fraud and deception;
- 21 (2) predatory lending practices relating to
- 22 mortgages; and
- 23 (3) foreclosure prevention and homeownership
- 24 preservation programs offered by each State.

○