

111TH CONGRESS
1ST SESSION

S. 863

To amend the Truth in Lending Act to protect consumers from certain practices in connection with the origination of consumer credit transactions secured by the principal dwelling of the consumer, and for other purposes.

IN THE SENATE OF THE UNITED STATES

APRIL 22, 2009

Ms. KLOBUCHAR introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To amend the Truth in Lending Act to protect consumers from certain practices in connection with the origination of consumer credit transactions secured by the principal dwelling of the consumer, 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 “Fairness for Home-
5 owners Act of 2009”.

1 **SEC. 2. ORIGINATIONS OF CONSUMER CREDIT TRANS-**
 2 **ACTIONS SECURED BY THE PRINCIPAL**
 3 **DWELLING.**

4 (a) IN GENERAL.—The Truth in Lending Act (15
 5 U.S.C. 1601 et seq.) is amended by inserting after section
 6 129A the following new section:

7 **“SEC. 129B. ORIGINATIONS OF CONSUMER CREDIT TRANS-**
 8 **ACTIONS SECURED BY THE PRINCIPAL**
 9 **DWELLING.**

10 “(a) DEFINITIONS.—For purposes of this section, the
 11 following definitions shall apply:

12 “(1) FULLY INDEXED RATE.—The term ‘fully
 13 indexed rate’ means the index rate prevailing at the
 14 time that a consumer credit transaction secured by
 15 the principal dwelling of a consumer is originated,
 16 plus the margin that will apply after the expiration
 17 of any introductory interest rate.

18 “(2) MORTGAGE BROKER.—The term ‘mortgage
 19 broker’ means any person who is defined or licensed
 20 as a mortgage broker under applicable State law.

21 “(b) REQUIREMENTS FOR ORIGINATORS.—

22 “(1) ABILITY TO PAY.—

23 “(A) IN GENERAL.—No creditor or mort-
 24 gage broker may make, provide, or arrange for
 25 any consumer credit transaction secured by the
 26 principal dwelling of a consumer without first

1 verifying the reasonable ability of the consumer
 2 to pay the scheduled payments of, as applica-
 3 ble—

4 “(i) principal;

5 “(ii) interest;

6 “(iii) real estate taxes; and

7 “(iv) homeowner insurance, assess-
 8 ments, and mortgage insurance premiums.

9 “(B) VARIABLE INTEREST RATE.—In the
 10 case of any consumer credit transaction secured
 11 by the principal dwelling of a consumer for
 12 which the applicable annual percentage rate
 13 may vary over the life of the credit, the reason-
 14 able ability to pay shall be determined, for pur-
 15 poses of this paragraph, on the basis of a fully
 16 indexed rate plus 200 basis points and a repay-
 17 ment schedule which achieves full amortization
 18 over the life of the extension of credit.

19 “(C) VERIFICATION OF CONSUMER INCOME
 20 AND FINANCIAL RESOURCES.—

21 “(i) IN GENERAL.—In the case of any
 22 consumer credit transaction secured by the
 23 principal dwelling of a consumer, the in-
 24 come and financial resources of the con-
 25 sumer shall be verified for purposes of this

1 paragraph by tax returns, payroll receipts,
2 bank records, or other similarly reliable
3 documents.

4 “(ii) CONSUMER STATEMENT INSUF-
5 FICIENT.—A statement by a consumer of
6 income or financial resources shall not be
7 sufficient to establish the existence of any
8 income or financial resources when
9 verifying the reasonable ability of the con-
10 sumer to repay any consumer credit trans-
11 action secured by the principal dwelling of
12 the consumer for purposes of this para-
13 graph.

14 “(D) OTHER CRITERIA.—A creditor or
15 mortgage broker may rely on additional criteria
16 other than income and financial resources to es-
17 tablish the reasonable ability of a consumer to
18 repay any consumer credit transaction secured
19 by the principal dwelling of the consumer, to
20 the extent such other criteria are also verified
21 through reasonably reliable methods and docu-
22 mentation.

23 “(E) EQUITY IN DWELLING NOT TO BE
24 TAKEN INTO ACCOUNT.—The consumer’s equity
25 in the principal dwelling that secures or would

1 secure the consumer credit transaction may not
2 be used to establish the ability to make the pay-
3 ments described in subparagraph (A) with re-
4 spect to such transaction.

5 “(2) PROHIBITION ON STEERING.—

6 “(A) IN GENERAL.—In connection with a
7 credit transaction secured by the principal
8 dwelling, a mortgage broker or creditor may
9 not—

10 “(i) steer, counsel, or direct a con-
11 sumer to rates, charges, principal amount,
12 or prepayment terms that are more expen-
13 sive for that which the consumer qualifies;
14 or

15 “(ii) make, provide, or arrange for
16 any consumer credit transaction secured by
17 the principal dwelling of a consumer that
18 is more expensive than that for which the
19 consumer qualifies.

20 “(B) DUTIES TO CONSUMERS.—If unable
21 to suggest, offer, or recommend to a consumer
22 a home loan that is not more expensive than
23 that for which the consumer qualifies, a mort-
24 gage originator shall—

1 “(i) based on the information reason-
2 ably available and using the skill, care, and
3 diligence reasonably expected for a mort-
4 gage originator, originate or otherwise fa-
5 cilitate a suitable home mortgage loan by
6 another creditor to a consumer, if per-
7 mitted by and in accordance with all other-
8 wise applicable law; or

9 “(ii) disclose to the consumer—

10 “(I) that the creditor does not
11 offer a home mortgage loan that is
12 not more expensive than a loan for
13 which the consumer qualifies, but that
14 other creditors may offer such a loan;
15 and

16 “(II) the reasons that the prod-
17 ucts and services offered by the mort-
18 gage originator are not available to or
19 reasonably advantageous for the con-
20 sumer.

21 “(C) PROHIBITED CONDUCT.—In connec-
22 tion with a credit transaction secured by the
23 principal dwelling, a mortgage originator may
24 not—

1 “(i) mischaracterize the credit history
 2 of a consumer or the home loans available
 3 to a consumer;

4 “(ii) mischaracterize or suborn the
 5 mischaracterization of the appraised value
 6 of the property securing the extension of
 7 credit; and

8 “(iii) if unable to suggest, offer, or
 9 recommend to a consumer a loan that is
 10 not more expensive than a loan for which
 11 the consumer qualifies, discourage a con-
 12 sumer from seeking a home mortgage loan
 13 from another creditor or with another
 14 mortgage originator.

15 “(3) PROHIBITION ON PREPAYMENT PEN-
 16 ALTIES.—In the case of any consumer credit trans-
 17 action secured by the principal dwelling of a con-
 18 sumer, the transaction may not contain terms under
 19 which a consumer is required to pay a prepayment
 20 penalty for paying all or part of the principal before
 21 the date on which the principal is due.

22 “(c) LIMITATION ON FINANCED POINTS, CHARGES,
 23 AND FEES.—

24 “(1) IN GENERAL.—No creditor or mortgage
 25 broker may, in connection with any consumer credit

1 transaction secured by the principal dwelling of a
 2 consumer, include in the principal amount of such
 3 transaction any portion of any qualified finance
 4 charge in excess of the amount which is equal to 5
 5 percent of the principal amount of the transaction.

6 “(2) DEFINITIONS.—For purposes of this sub-
 7 section, the following definitions shall apply:

8 “(A) QUALIFIED FINANCE CHARGE.—The
 9 term ‘qualified finance charge’ means the sum
 10 of—

11 “(i) the finance charge, as determined
 12 under section 103(aa)(4); and

13 “(ii) all compensation paid to a mort-
 14 gage broker from any source in connection
 15 with the transaction.

16 “(B) PRINCIPAL AMOUNT.—The term
 17 ‘principal amount’ means—

18 “(i) in the case of any consumer cred-
 19 it transaction under an open end credit
 20 plan secured by the principal dwelling of
 21 the consumer, the maximum amount of
 22 credit that may be extended under the
 23 terms of such plan, as determined without
 24 taking into account any amount included

1 in determining the finance charge under
2 section 106; and

3 “(ii) in the case of any other con-
4 sumer credit transaction secured by the
5 principal dwelling of a consumer, the face
6 amount of the obligation on the note.

7 “(3) PROHIBITION ON EXCESSIVE FINANCE
8 CHARGES.—

9 “(A) LIMITATION BASED ON AMOUNT OF
10 TRANSACTION.—No person may, in connection
11 with any consumer credit transaction secured
12 by the principal dwelling of a consumer, impose
13 or receive any amount included in determining
14 the qualified finance charge for such trans-
15 action that exceeds the amount which is equal
16 to 5 percent of the principal amount of the
17 transaction.

18 “(B) LIMITATION ON FEE FOR PROVIDING
19 LESS BENEFICIAL TERMS FOR CONSUMER.—Ex-
20 cept as provided in subparagraph (C), no per-
21 son may provide, and no mortgage originator
22 may receive, directly or indirectly, any com-
23 pensation for originating a consumer credit
24 transaction secured by the principal dwelling of
25 a consumer that is more costly than that for

1 which the consumer qualifies, or that is based
2 on, or varies with, the terms of any home mort-
3 gage loan (other than the amount of loan prin-
4 cipal).

5 “(C) EXCEPTION.—Notwithstanding sub-
6 paragraph (B), a mortgage broker may receive
7 compensation in the form of an increased rate,
8 but only if—

9 “(i) the mortgage broker receives no
10 other compensation, however denominated,
11 directly or indirectly, from the consumer,
12 creditor, or other mortgage originator;

13 “(ii) the loan does not include dis-
14 count points, origination points, or rate re-
15 duction points, however denominated, or
16 any payment reduction fee, however de-
17 nominated;

18 “(iii) the loan does not include a pre-
19 payment penalty; and

20 “(iv) there are no other closing costs
21 associated with the loan, except for fees to
22 government officials or amounts to fund
23 escrow accounts for taxes and insurance.

24 “(d) MORTGAGE BROKER DUTIES.—

1 “(1) IN GENERAL.—Any mortgage broker act-
2 ing to obtain or arrange for any consumer credit
3 transaction secured by the principal dwelling of a
4 consumer shall owe a duty to the borrower to comply
5 with the requirements of paragraph (2).

6 “(2) REQUIREMENTS.—Mortgage brokers
7 shall—

8 “(A) act in the best interest of the con-
9 sumer and in the utmost good faith toward
10 each consumer and shall not compromise a con-
11 sumer’s right or interest in favor of another’s
12 right or interest, including a right or interest of
13 the mortgage broker;

14 “(B) not accept, give, or charge any undis-
15 closed compensation or realize any undisclosed
16 remuneration, either through direct or indirect
17 means, that inures to the benefit of the mort-
18 gage broker on an expenditure made for the
19 consumer;

20 “(C) carry out all lawful instructions given
21 by the consumer;

22 “(D) disclose to consumers all material
23 facts of which the mortgage broker has knowl-
24 edge which might reasonably affect the rights,
25 interests, or ability of the consumer to receive

1 the intended benefit from the consumer credit
 2 transaction, but not facts which are reasonably
 3 susceptible to the knowledge of the consumer;

4 “(E) use reasonable care in performing du-
 5 ties; and

6 “(F) account to a consumer for all the
 7 money and property of the consumer received
 8 as agent.

9 “(3) SCOPE.—The duties of the mortgage
 10 broker to the consumer apply when the mortgage
 11 broker is acting in the capacity of mortgage broker
 12 providing mortgage brokerage services with respect
 13 to any consumer credit transaction secured by the
 14 principal dwelling of the consumer for which the
 15 broker is not the creditor.

16 “(4) RULES OF CONSTRUCTION.—

17 “(A) FEES FOR SERVICES RENDERED.—

18 No provision of this subsection shall be con-
 19 strued as prohibiting a mortgage broker from
 20 contracting for or collecting a fee for services
 21 actually rendered, to the extent that the fee has
 22 been disclosed to the consumer in advance of
 23 the provision of such services and complies with
 24 subsection (c)(3).

1 “(B) DUTY OF BROKER.—Except as re-
 2 quired by subsection (b)(2), no provision of this
 3 subsection shall be construed as requiring a
 4 mortgage broker—

5 “(i) to obtain or arrange for any con-
 6 sumer credit transaction secured by the
 7 principal dwelling of the consumer on be-
 8 half of a consumer that contains terms or
 9 conditions not available to the mortgage
 10 broker in the usual course of the business
 11 of the mortgage broker; or

12 “(ii) to obtain or arrange for any con-
 13 sumer credit transaction secured by the
 14 principal dwelling of the consumer from a
 15 creditor with whom the mortgage broker
 16 does not have a business relationship.

17 “(e) INDEPENDENT VERIFICATION OF CONSUMER
 18 COUNSELING BEFORE REFINANCING SPECIAL MORT-
 19 GAGES.—

20 “(1) IN GENERAL.—No creditor or mortgage
 21 broker may make, provide, or arrange for any con-
 22 sumer credit transaction secured by the principal
 23 dwelling of the consumer all or a portion of the pro-
 24 ceeds of which are used to fully or partially pay off
 25 a special mortgage, unless the borrower has obtained

1 a written certification from an authorized inde-
2 pendent loan counselor that the borrower has re-
3 ceived counseling on the advisability of the trans-
4 action.

5 “(2) DEFINITIONS.—For purposes of this sub-
6 section, the following definitions shall apply:

7 “(A) SPECIAL MORTGAGE.—The term ‘spe-
8 cial mortgage’ means any consumer credit
9 transaction secured by the principal dwelling of
10 a consumer that was originated, subsidized,
11 funded, or guaranteed by or through a State,
12 tribal, or local government, or nonprofit organi-
13 zation, and that bears 1 or more of the fol-
14 lowing nonstandard payment terms which sub-
15 stantially benefit the consumer:

16 “(i) Payments vary with income.

17 “(ii) Payments of principal or interest
18 are not required or can be deferred under
19 specified conditions.

20 “(iii) Principal or interest is forgiv-
21 able under specified conditions.

22 “(iv) Either no interest or an annual
23 interest rate of 2 percent or less is charged
24 in connection with the loan.

1 “(B) AUTHORIZED LOAN COUNSELOR.—

2 The term ‘authorized independent loan coun-
 3 selor’ means any nonprofit, third-party indi-
 4 vidual or organization providing homebuyer
 5 education programs, foreclosure prevention
 6 services, mortgage loan counseling, or credit
 7 counseling that is certified by the Secretary of
 8 Housing and Urban Development, or certified
 9 by any State housing agency or nonprofit orga-
 10 nization designated by such Secretary, for such
 11 purposes.

12 “(f) MINIMUM FINANCIAL REQUIREMENTS FOR
 13 MORTGAGE BROKERS.—No mortgage broker may obtain
 14 or arrange for any consumer credit transaction secured
 15 by the principal dwelling of the consumer unless, at all
 16 times, the mortgage broker—

17 “(1) maintains a minimum net worth, net of in-
 18 tangibles, of at least \$500,000, as determined in ac-
 19 cordance with generally accepted accounting prin-
 20 ciples; or

21 “(2) maintains a surety bond or irrevocable let-
 22 ter of credit in the amount of \$50,000.

23 “(g) ENFORCEMENT.—For purposes of providing a
 24 cause of action for any failure by a mortgage broker to
 25 comply with any requirement imposed under this section,

1 section 130(a) shall be applied with respect to any such
2 failure—

3 “(1) by substituting ‘mortgage broker’ for
4 ‘creditor’ each place such term appears in such sec-
5 tion; and

6 “(2) by treating all qualified finance charges
7 (as defined in subsection (c)(2)(A)) incurred in the
8 origination of any consumer credit transaction se-
9 cured by the principal dwelling of the consumer and
10 any compensation paid or payable in violation of
11 subsection (c)(3) as actual damages sustained by the
12 consumer as a result of the failure.

13 “(h) EXCLUSION OF REVERSE MORTGAGES.—This
14 section shall not apply with respect to any reverse mort-
15 gage transaction.”.

16 (b) TECHNICAL AND CONFORMING AMENDMENTS.—
17 The Truth in Lending Act (15 U.S.C. 1601 et seq.) is
18 amended—

19 (1) in section 103(u) (15 U.S.C. 1602(u)), by
20 striking “and the disclosures required by section
21 129(a)” and inserting “and the provisions of sec-
22 tions 129 and 129B”;

23 (2) in section 130 (15 U.S.C. 1640), by insert-
24 ing “or 129B” after “section 129” each place that
25 term appears;

1 (3) in the subsection heading of section 131(d)
 2 (15 U.S.C. 1641(d)), by striking “CERTAIN” and in-
 3 sert “HIGH-COST”;

4 (4) in section 131(c) (15 U.S.C. 1641(c))—

5 (A) by striking “(c) Any consumer” and
 6 inserting “(c) RESCISSION RIGHTS.—

7 “(1) IN GENERAL.—Any consumer”; and

8 (B) by adding at the end the following new
 9 paragraph:

10 “(2) CIVIL DAMAGES.—In a consumer credit
 11 transaction secured by a principal dwelling, other
 12 than a mortgage referred to in section 103(aa), an
 13 assignee or holder shall be liable for violations of
 14 this chapter or, of section 129B in a civil action for
 15 monetary damages under section 130(a), notwith-
 16 standing paragraph (1), except that any relief made
 17 permissible by this subparagraph may not exceed the
 18 sum of the amount of any remaining indebtedness
 19 and the total amount paid by the consumer in con-
 20 nection with the transaction.”; and

21 (5) in section 131 (15 U.S.C. 1641) by adding
 22 at the end the following new subsection:

23 “(g) REMEDY IN LIEU OF RESCISSION FOR CERTAIN
 24 VIOLATIONS.—At the election of a consumer entitled to
 25 rescission for violations of section 129B, any person, in-

1 cluding a creditor, who holds, purchases, or is otherwise
 2 assigned a mortgage or similar security interest in connec-
 3 tion with a mortgage on a principal dwelling—

4 “(1) may be required to make such adjustments
 5 to the balance of the obligation as are required
 6 under section 125, and to reflect any other relief
 7 pursuant to section 130 and any other legal claims;
 8 and

9 “(2) shall modify or refinance the loan, at no
 10 cost to the consumer, the resulting balance of which
 11 shall provide terms that would have satisfied the re-
 12 quirements of section 129B at the origination of the
 13 loan and to pay costs and reasonable attorney fees.”.

14 (c) CLERICAL AMENDMENT.—The table of sections
 15 for chapter 2 of the Truth in Lending Act is amended
 16 by inserting after the item relating to section 129A the
 17 following new items:

“Sec. 129A. Fiduciary duty of servicers of pooled residential mortgages.

“Sec. 129B. Originations of consumer credit transactions secured by the prin-
 cipal dwelling.”.

