

**New Congressionally Proposed Solutions - The Mortgage Reform and Anti-Predatory Lending Act of 2007 - By Richard Ivar Rydstrom, Esq.  
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**The Mortgage Reform and Anti-Predatory Lending Act of 2007** amends the Truth in Lending Act ("TILA") with a duty incumbent upon the residential mortgage broker or originating lender to determine and certify the borrower's reasonable "ability to pay" from a "reasonable and good faith determination based on verified and documented information" of the particular loan being made, as applied to all loans owed, at an assumed fixed interest rate equal to the fully indexed interest rate (considering taxes, assessments, insurance, deferred payments, or negative amortization). On a refinance loan, the duty translates into a duty to determine and certify that the borrower received a "net tangible benefit". Mortgage lenders and brokers would have a duty to make disclosures and certify compliance with the Act and to "diligently work" to offer a borrower "appropriate" loan products. The law would mandate that definitions be supplied by the federal banking regulations issued within 18 months from enactment.

A violation of this national standard would create a cause of action for rescission, fees and costs. Parties within that circle of liability are the lender, assignee(s), aggregator and securitizer, not investors. The Act would prohibit "steering" incentives including incentive compensation (any yield spread premium) based on, or varying with, the terms of a residential mortgage loan.

Assignee are entitled a conclusive presumption (unlike lenders who get a rebuttable presumption) that the loan is in compliance with the requirements of the "qualified mortgage" and "qualified safe harbor mortgage" minimum standards. The former is satisfied objectively if the fully indexed APR is less than 3 percentage points over the comparable treasuries, and no more than 175 basis points over the H. 15 release rate or the daily contract rate on fixed rate first lien commitments as published by the Federal Reserve. Junior lien would use the same standards at 5 percentage points and 375 basis points respectively.

Financing lenders with secured loans or repurchase agreements will come with liability exposure. "Pools" and "investors" are exempt, but not trusts or trustees.

A "qualified safe harbor mortgage" is a mortgage that verified and documented the borrower's income and resources, underwritten as a fully indexed rate with taxes and insurance factored in, had no negative amortization, no balloon payments, determined that the borrower's monthly burden did not exceed 50% over gross income, payments are fixed for at least 7 years or if an ARM the APR is not greater than 3 percentage points over comparable Treasuries, and that is in compliance with regulations to be issued.

The Act allows the assignee to "cure" violations within 90 days after notice from borrower. The assignee or securitizer would "modify" the loan to cure the defects. The Act supplies a safe harbor for the assignee or securitizer if a "policy" is maintained to only purchase qualified safe harbor mortgages or qualified mortgages. It sounds like this

would require a "single purpose entity" type vehicle to exclude commingled multi-purposed acquisitions, pools or securitization. The question is whether or not from a modeling perspective, it would require like-kind pooling without cross risk diversifications? It would also require active (reasonable) due diligence "sampling" with "adequate, thorough and consistently applied sampling procedures" consistent with any issued regulations (to come). It also requires that "representations and warranties" were given from the seller that the mortgages are qualified safe harbor mortgages or qualified mortgages.

The Act grants a six year statute of limitations with the right of a borrower to make a claim any time after two months delinquency and as a defense to foreclosure.

HOEPA liability is expanded. Purchasers or assignees of high cost loans would subject itself to all of HOEPA's claims and defenses (as against a lender). The Act expands the definition of the Federal Reserve Board standards of "high cost" when the APR is greater than Treasuries in first liens by 8 percentage points, or 10 percentage points for junior liens. Total costs and fees over exceed 5% of the loan amount. The Act prohibits prepayment penalties ("PPP") other than a qualified mortgage. It prohibits all PPP to expire before three months of the first reset date. Also, you could no longer finance credit life insurance, disability insurance, unemployment insurance, or other loss of income insurance. Generally, mandatory arbitration provisions are prohibited.

The Act prohibits creditor practices and procedures with respect to high-cost mortgages. For example: (1) recommending default on an existing loan or other debt before and in connection with closing of a high-cost mortgage that refinances all or any portion of such existing loan or debt; (2) imposing late fees except according to specified requirements; (3) exercising sole discretion to accelerate indebtedness; (4) financing points and fees; (4) structuring certain transactions and reciprocal arrangements to evade the requirements and prohibitions of this Act; and (5) charging certain modification or deferral fees, and fees for notification of payoff information. The Act also requires pre-loan counseling. (CRS Summary, H.R.3915).

Problem with the Act: This Act is written with good intentions, ***but restrictions placed on the ability to effectuate loan modifications is a serious shortfall*** of the Act. Refined safeguards should be imposed, not blanket prohibitions. For example, prohibiting a loan modification that "pays for risk" in other than predatory loans, strains the economics of the solution. When price is not paid for risk, the system fails. There is nothing wrong with allowing a borrower to pay for enhanced risk for non-cash-equivalents. The Act ignores the opportunities to implement a true solution to the unspoken problem of "affordability". To infuse affordability into the system, we can "force" the banks and investors to accept more risk needed to enhance homeownership and save millions from potential foreclosure, but we must do so with by paying for such enhanced risk. The problem made in the last round of mortgages was we forced price to be paid in the form of increased monthly payments; payments borrowers could not afford. We did that with high cost seconds and private mortgage insurance. It is time to refine these products and concepts and offer a cash-equivalent monthly price to be paid for such enhanced risk.

Apparently the approved amendment requiring "escrow" of taxes, again does not address the fundamental issue of: Can we enhance affordability? The Act imposes some good changes, but fails to address the underlying issue.

The debate is slow to ask whether there are alternatives that would allow enhanced homeownership with alternative non-cash burdened (monthly) safeguards. Instead Congress 'restricts' the obvious as the problem, unfortunately, ignoring the question of whether we can or should offer new solutions that refine the cause.

### **New “Affordability” Solution – FMII™ - Richard Ivar Rydstrom**

**Long-Term Solution: To Avoid Repeat of Mortgage Meltdown:  
FMII™ - Foreclosure Mortgage Insurance Investment Funds™ -  
Long-Term Solution: To Avoid Repeat of Mortgage Meltdown:**

FMII™ - Foreclosure Mortgage Insurance Investment Funds™ - FMII™ (DMII™ - Default Mortgage Insurance Investment Funds, BMII™ - Bankruptcy Mortgage Insurance Investment Funds, IMII™ - Investors Mortgage Insurance Investment Funds) were created by Attorney Rydstrom and published by the 110th Congress on the problems and solutions facing middle class homeownership and retirement. We must pay for risk or the price risk formula will be corrupt. There should be no free lunches, but that doesn't have to mean the price for extra risk can't be paid by an insured investment fund that trades that risk-benefit on Wall Street, potentially building billions if not trillions in “certainty” equity, now missing from the Shadow Banking System ([www.ShadowBanking.Com](http://www.ShadowBanking.Com)). This is how we can reduce “market uncertainty” ([www.Marketuncertainty.Com](http://www.Marketuncertainty.Com)) and “avoid market and loss extremes” ([www.MarketDevaluation.Com](http://www.MarketDevaluation.Com)) while at the same time saving millions of homeowners from being thrown out on the streets. Yes, it is simply silly to expect someone who can't afford something to pay extra with “monthly cash” that they don't have. My experiences working on Wall Street taught me that **“price” can be paid with ‘non-cash’ items, or “cash-equivalents”** and “non-cash” risk mitigation devices or insured investment traded funds. Hedge funds and private equity are uniquely poised to “help” us solve this problem, if we call on them. See **FHA HUD Partial Claim – (SHILO™: FHA HUD – FMII™ Partial Claims)** above. Click for more on: <http://www.foreclosuremortgageinsurance.com>

<http://www.hotneutral.com/html/fmiitm.html>

<http://foreclosuremortgageinvestmentfund.com>

[http://shadowbankingsystem.com/Helping\\_Homeowners\\_Keep\\_Their\\_Homes\\_FINAL1a.pdf](http://shadowbankingsystem.com/Helping_Homeowners_Keep_Their_Homes_FINAL1a.pdf)

<http://waysandmeans.house.gov/hearings.asp?formmode=view&id=5617>

## **Equity Building Rescue Funds (EBRF) | Bailouts! Rescue Funds or Handouts!**

### **Market Equity Funds:**

FMII™ - Foreclosure Mortgage Insurance Investment Funds™

DMII™ - Default Mortgage Insurance Investment Funds™

BMII™ - Bankruptcy Mortgage Insurance Investment Funds™

IMII™ - Investors Mortgage Insurance Investment Funds™

In a \$10 trillion mortgage market, the subprime market is about 15%. Assuming a loss ratio of some 10%, a loss bailout would be in the area of \$150 billion. A \$100 to \$300 million blanket will not be sufficient. \$1 billion is a good start, but we will need much more. Are we talking a **Bailout of the Economy** or a **Bailout of Homeowners**? Are we recommending blind **bailouts** or **borrower handouts**, **Wall Street Bailouts**, **China or Japan Bailouts**? We should be talking about a **comprehensive rescue of our economy** and its participants and safeguards, including the homeowners who may be thrown to the streets. We need a total market refined working solution. One way to solve this shortfall is to implement tradable FMII™ type insured mortgage investment funds. Click <http://waysandmeans.house.gov/hearings.asp?formmode=view&id=5617> . These funds would build up huge excess equity and profits, as the high-risk high-yield subprime and Alt-A mortgage markets have proven to be at least an 80% good bet. The short and long term solution must include a mechanism to safeguard against extreme market devaluation and the defaulting 13-20%. **FMII™** is an **'EQUITY BUILDING BAILOUT FUND' (EBBF)** that supports the narrowly defined risks associated with the mortgage industry, especially subprime and Alt-A borrowers. **FMII™ - Foreclosure Mortgage Insurance Investment Funds™** will supply the “certainty” and money necessary to pay for such events of foreclosure as predefined in the loan and fund agreements. This is key, because it will maintain a “money flow” to pay for the asset (home) loan burdens, maintenance and upkeep, employing thousands of independent contractors, and critically supporting

asset (home) valuations by eliminating the downward pressure appraisal frenzy that occurs when homes are ‘sold short’ or in foreclosure for 20-40% below market price. Since FMII™ automatically “covers” this event, there is no reason for homes to sell at such deep discounts, forcing other homes to devalue immediately since home appraisals are based upon the last six months of “actual sales” in the local area. **DMII™ - Default Mortgage Insurance Investment Funds** will cover the default risks and circumstances, **BMII™ - Bankruptcy Mortgage Insurance Investment Funds** will cover its related risks and circumstances and **IMII™ - Investors Mortgage Insurance Investment Funds** will allow investors to cease over-pricing the second loans, rendering them “unaffordable”, by paying for that extra risk that must be paid but not necessarily by overburdened borrowers. This will help reduce adding RahC and RahD into the price-risk formula. For more info go to: <http://foreclosuremortgageinvestmentfund.com>  
[www.equitybuildingbailoutfunds.org](http://www.equitybuildingbailoutfunds.org)  
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Richard Ivar Rydstrom is an attorney with O’Connell & Rydstrom. He has developed solutions to the current lending crisis including [www.Help4ThePeople.org](http://www.Help4ThePeople.org), TID - Truly Intelligent Disclosures and SHILO - Safe Harbor Intelligent Loan Options and FMII (Foreclosure Mortgage Insurance Investment Funds) published by the 110<sup>th</sup> Congress ([www.HotNeutral.com](http://www.HotNeutral.com)). He holds a B.S. in Professional Accounting from C.W. Post at Long Island University, a J.D. from Western State University, and an International Law Certificate from Cambridge Law, England. For further information, call (949) 798-6206 or email [rrydstrom@gmail.com](mailto:rrydstrom@gmail.com), [www.rirlegal.com](http://www.rirlegal.com)

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