

Public Law 100-709
100th Congress

An Act

To amend the Truth in Lending Act to establish additional disclosure, advertising, and other requirements for home equity loans.

Nov. 23, 1988
[H.R. 3011]

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

Home Equity
Loan Consumer
Protection Act of
1988.
15 USC 1601
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Home Equity Loan Consumer Protection Act of 1988".

SEC. 2. DISCLOSURE AND ADVERTISING REQUIREMENTS FOR HOME EQUITY LOANS.

(a) DISCLOSURE REQUIREMENTS.—Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by inserting after section 127 the following new section:

"SEC. 127A. DISCLOSURE REQUIREMENTS FOR OPEN END CONSUMER CREDIT PLANS SECURED BY THE CONSUMER'S PRINCIPAL DWELLING.

15 USC 1637a.

"(a) APPLICATION DISCLOSURES.—In the case of any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling, the creditor shall make the following disclosures in accordance with subsection (b):

"(1) FIXED ANNUAL PERCENTAGE RATE.—Each annual percentage rate imposed in connection with extensions of credit under the plan and a statement that such rate does not include costs other than interest.

"(2) VARIABLE PERCENTAGE RATE.—In the case of a plan which provides for variable rates of interest on credit extended under the plan—

"(A) a description of the manner in which such rate will be computed and a statement that such rate does not include costs other than interest;

"(B) a description of the manner in which any changes in the annual percentage rate will be made, including—

"(i) any negative amortization and interest rate carryover;

"(ii) the timing of any such changes;

"(iii) any index or margin to which such changes in the rate are related; and

"(iv) a source of information about any such index;

"(C) if an initial annual percentage rate is offered which is not based on an index—

"(i) a statement of such rate and the period of time such initial rate will be in effect; and

"(ii) a statement that such rate does not include costs other than interest;

"(D) a statement that the consumer should ask about the current index value and interest rate;

"(E) a statement of the maximum amount by which the annual percentage rate may change in any 1-year period or a statement that no such limit exists;

"(F) a statement of the maximum annual percentage rate that may be imposed at any time under the plan;

"(G) subject to subsection (b)(3), a table, based on a \$10,000 extension of credit, showing how the annual percentage rate and the minimum periodic payment amount under each repayment option of the plan would have been affected during the preceding 15-year period by changes in any index used to compute such rate;

"(H) a statement of—

"(i) the maximum annual percentage rate which may be imposed under each repayment option of the plan;

"(ii) the minimum amount of any periodic payment which may be required, based on a \$10,000 outstanding balance, under each such option when such maximum annual percentage rate is in effect; and

"(iii) the earliest date by which such maximum annual interest rate may be imposed; and

"(I) a statement that interest rate information will be provided on or with each periodic statement.

"(3) **OTHER FEES IMPOSED BY THE CREDITOR.**—An itemization of any fees imposed by the creditor in connection with the availability or use of credit under such plan, including annual fees, application fees, transaction fees, and closing costs (including costs commonly described as 'points'), and the time when such fees are payable.

"(4) **ESTIMATES OF FEES WHICH MAY BE IMPOSED BY THIRD PARTIES.**—

"(A) **AGGREGATE AMOUNT.**—An estimate, based on the creditor's experience with such plans and stated as a single amount or as a reasonable range, of the aggregate amount of additional fees that may be imposed by third parties (such as governmental authorities, appraisers, and attorneys) in connection with opening an account under the plan.

"(B) **STATEMENT OF AVAILABILITY.**—A statement that the consumer may ask the creditor for a good faith estimate by the creditor of the fees that may be imposed by third parties.

"(5) **STATEMENT OF RISK OF LOSS OF DWELLING.**—A statement that—

"(A) any extension of credit under the plan is secured by the consumer's dwelling; and

"(B) in the event of any default, the consumer risks the loss of the dwelling.

"(6) **CONDITIONS TO WHICH DISCLOSED TERMS ARE SUBJECT.**—

"(A) **PERIOD DURING WHICH SUCH TERMS ARE AVAILABLE.**—A clear and conspicuous statement—

"(i) of the time by which an application must be submitted to obtain the terms disclosed; or

"(ii) if applicable, that the terms are subject to change.

“(B) RIGHT OF REFUSAL IF CERTAIN TERMS CHANGE.—A statement that—

“(i) the consumer may elect not to enter into an agreement to open an account under the plan if any term changes (other than a change contemplated by a variable feature of the plan) before any such agreement is final; and

“(ii) if the consumer makes an election described in clause (i), the consumer is entitled to a refund of all fees paid in connection with the application.

“(C) RETENTION OF INFORMATION.—A statement that the consumer should make or otherwise retain a copy of information disclosed under this subparagraph.

“(7) RIGHTS OF CREDITOR WITH RESPECT TO EXTENSIONS OF CREDIT.—A statement that—

“(A) under certain conditions, the creditor may terminate any account under the plan and require immediate repayment of any outstanding balance, prohibit any additional extension of credit to the account, or reduce the credit limit applicable to the account; and

“(B) the consumer may receive, upon request, more specific information about the conditions under which the creditor may take any action described in subparagraph (A).

“(8) REPAYMENT OPTIONS AND MINIMUM PERIODIC PAYMENTS.—The repayment options under the plan, including—

“(A) if applicable, any differences in repayment options with regard to—

“(i) any period during which additional extensions of credit may be obtained; and

“(ii) any period during which repayment is required to be made and no additional extensions of credit may be obtained;

“(B) the length of any repayment period, including any differences in the length of any repayment period with regard to the periods described in clauses (i) and (ii) of subparagraph (A); and

“(C) an explanation of how the amount of any minimum monthly or periodic payment will be determined under each such option, including any differences in the determination of any such amount with regard to the periods described in clauses (i) and (ii) of subparagraph (A).

“(9) EXAMPLE OF MINIMUM PAYMENTS AND MAXIMUM REPAYMENT PERIOD.—An example, based on a \$10,000 outstanding balance and the interest rate (other than a rate not based on the index under the plan) which is, or was recently, in effect under such plan, showing the minimum monthly or periodic payment, and the time it would take to repay the entire \$10,000 if the consumer paid only the minimum periodic payments and obtained no additional extensions of credit.

“(10) STATEMENT CONCERNING BALLOON PAYMENTS.—If, under any repayment option of the plan, the payment of not more than the minimum periodic payments required under such option over the length of the repayment period—

“(A) would not repay any of the principal balance; or

“(B) would repay less than the outstanding balance by the end of such period,

as the case may be, a statement of such fact, including an explicit statement that at the end of such repayment period a balloon payment (as defined in section 147(f)) would result which would be required to be paid in full at that time.

“(11) **NEGATIVE AMORTIZATION.**—If applicable, a statement that—

“(A) any limitation in the plan on the amount of any increase in the minimum payments may result in negative amortization;

“(B) negative amortization increases the outstanding principal balance of the account; and

“(C) negative amortization reduces the consumer's equity in the consumer's dwelling.

“(12) **LIMITATIONS AND MINIMUM AMOUNT REQUIREMENTS ON EXTENSIONS OF CREDIT.**—

“(A) **NUMBER AND DOLLAR AMOUNT LIMITATIONS.**—Any limitation contained in the plan on the number of extensions of credit and the amount of credit which may be obtained during any month or other defined time period.

“(B) **MINIMUM BALANCE AND OTHER TRANSACTION AMOUNT REQUIREMENTS.**—Any requirement which establishes a minimum amount for—

“(i) the initial extension of credit to an account under the plan;

“(ii) any subsequent extension of credit to an account under the plan; or

“(iii) any outstanding balance of an account under the plan.

“(13) **STATEMENT REGARDING CONSULTATION OF TAX ADVISOR.**—A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.

“(14) **DISCLOSURE REQUIREMENTS ESTABLISHED BY BOARD.**—Any other term which the Board requires, in regulations, to be disclosed.

“(b) **TIME AND FORM OF DISCLOSURES.**—

“(1) **TIME OF DISCLOSURE.**—

“(A) **IN GENERAL.**—The disclosures required under subsection (a) with respect to any open end consumer credit plan which provides for any extension of credit which is secured by the consumer's principal dwelling and the pamphlet required under subsection (e) shall be provided to any consumer at the time the creditor distributes an application to establish an account under such plan to such consumer.

“(B) **TELEPHONE, PUBLICATIONS, AND 3d PARTY APPLICATIONS.**—In the case of telephone applications, applications contained in magazines or other publications, or applications provided by a third party, the disclosures required under subsection (a) and the pamphlet required under subsection (e) shall be provided by the creditor before the end of the 3-day period beginning on the date the creditor receives a completed application from a consumer.

“(2) **FORM.**—

“(A) **IN GENERAL.**—Except as provided in paragraph (1)(B), the disclosures required under subsection (a) shall be provided on or with any application to establish an account under an open end consumer credit plan which provides for

any extension of credit which is secured by the consumer's principal dwelling.

"(B) SEGREGATION OF REQUIRED DISCLOSURES FROM OTHER INFORMATION.—The disclosures required under subsection (a) shall be conspicuously segregated from all other terms, data, or additional information provided in connection with the application, either by grouping the disclosures separately on the application form or by providing the disclosures on a separate form, in accordance with regulations of the Board.

"(C) PRECEDENCE OF CERTAIN INFORMATION.—The disclosures required by paragraphs (5), (6), and (7) of subsection (a) shall precede all of the other required disclosures.

"(D) SPECIAL PROVISION RELATING TO VARIABLE INTEREST RATE INFORMATION.—Whether or not the disclosures required under subsection (a) are provided on the application form, the variable rate information described in subsection (a)(2) may be provided separately from the other information required to be disclosed.

"(3) REQUIREMENT FOR HISTORICAL TABLE.—In preparing the table required under subsection (a)(2)(G), the creditor shall consistently select one rate of interest for each year and the manner of selecting the rate from year to year shall be consistent with the plan.

"(c) 3d PARTY APPLICATIONS.—In the case of an application to open an account under any open end consumer credit plan described in subsection (a) which is provided to a consumer by any person other than the creditor—

"(1) such person shall provide such consumer with—

"(A) the disclosures required under subsection (a) with respect to such plan, in accordance with subsection (b); and

"(B) the pamphlet required under subsection (e); or

"(2) if such person cannot provide specific terms about the plan because specific information about the plan terms is not available, no nonrefundable fee may be imposed in connection with such application before the end of the 3-day period beginning on the date the consumer receives the disclosures required under subsection (a) with respect to the application.

"(d) PRINCIPAL DWELLING DEFINED.—For purposes of this section and sections 137 and 147, the term 'principal dwelling' includes any second or vacation home of the consumer.

"(e) PAMPHLET.—In addition to the disclosures required under subsection (a) with respect to an application to open an account under any open end consumer credit plan described in such subsection, the creditor or other person providing such disclosures to the consumer shall provide—

"(1) a pamphlet published by the Board pursuant to section 4 of the Home Equity Consumer Protection Act of 1988; or

"(2) any pamphlet which provides substantially similar information to the information described in such section, as determined by the Board."

(b) ADDITIONAL DISCLOSURES WHEN ACCOUNT IS OPENED.—Section 127(a) of the Truth in Lending Act (15 U.S.C. 1637(a)) is amended by adding at the end thereof the following new paragraph:

"(8) In the case of any account under an open end consumer credit plan which provides for any extension of credit which is

secured by the consumer's principal dwelling, any information which—

“(A) is required to be disclosed under section 127A(a); and

“(B) the Board determines is not described in any other paragraph of this subsection.”.

(c) **ADVERTISING REQUIREMENTS.**—Chapter 3 of the Truth in Lending Act (15 U.S.C. 1661 et seq.) is amended by adding at the end thereof the following new section:

15 USC 1665b.

“SEC. 147. ADVERTISING OF OPEN END CONSUMER CREDIT PLANS SECURED BY THE CONSUMER'S PRINCIPAL DWELLING.

“(a) **IN GENERAL.**—If any advertisement to aid, promote, or assist, directly or indirectly, the extension of consumer credit through an open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling states, affirmatively or negatively, any of the specific terms of the plan, including any periodic payment amount required under such plan, such advertisement shall also clearly and conspicuously set forth the following information, in such form and manner as the Board may require:

“(1) **LOAN FEES AND OPENING COST ESTIMATES.**—Any loan fee the amount of which is determined as a percentage of the credit limit applicable to an account under the plan and an estimate of the aggregate amount of other fees for opening the account, based on the creditor's experience with the plan and stated as a single amount or as a reasonable range.

“(2) **PERIODIC RATES.**—In any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as an annual percentage rate.

“(3) **HIGHEST ANNUAL PERCENTAGE RATE.**—The highest annual percentage rate which may be imposed under the plan.

“(4) **OTHER INFORMATION.**—Any other information the Board may by regulation require.

“(b) **TAX DEDUCTIBILITY.**—If any advertisement described in subsection (a) contains a statement that any interest expense incurred with respect to the plan is or may be tax deductible, the advertisement shall not be misleading with respect to such deductibility.

“(c) **CERTAIN TERMS PROHIBITED.**—No advertisement described in subsection (a) with respect to any home equity account may refer to such loan as ‘free money’ or use other terms determined by the Board by regulation to be misleading.

“(d) **DISCOUNTED INITIAL RATE.**—

“(1) **IN GENERAL.**—If any advertisement described in subsection (a) includes an initial annual percentage rate that is not determined by the index or formula used to make later interest rate adjustments, the advertisement shall also state with equal prominence the current annual percentage rate that would have been applied using the index or formula if such initial rate had not been offered.

“(2) **QUOTED RATE MUST BE REASONABLY CURRENT.**—The annual percentage rate required to be disclosed under the paragraph (1) rate must be current as of a reasonable time given the media involved.

“(3) **PERIOD DURING WHICH INITIAL RATE IS IN EFFECT.**—Any advertisement to which paragraph (1) applies shall also state the period of time during which the initial annual percentage rate referred to in such paragraph will be in effect.

“(e) **BALLOON PAYMENT.**—If any advertisement described in subsection (a) contains a statement regarding the minimum monthly payment under the plan, the advertisement shall also disclose, if applicable, the fact that the plan includes a balloon payment.

“(f) **BALLOON PAYMENT DEFINED.**—For purposes of this section and section 127A, the term ‘balloon payment’ means, with respect to any open end consumer credit plan under which extensions of credit are secured by the consumer’s principal dwelling, any repayment option under which—

“(1) the account holder is required to repay the entire amount of any outstanding balance as of a specified date or at the end of a specified period of time, as determined in accordance with the terms of the agreement pursuant to which such credit is extended; and

“(2) the aggregate amount of the minimum periodic payments required would not fully amortize such outstanding balance by such date or at the end of such period.”

(d) **TECHNICAL AND CONFORMING AMENDMENTS.**—Section 122(b) of the Truth in Lending Act (15 U.S.C. 1632(b)) is amended by striking out “section 128(b)(1)” and inserting in lieu thereof “sections 127A(b)(3) and 128(b)(1)”.

SEC. 3. HOME EQUITY PROTECTIONS.

Chapter 2 of the Truth in Lending Act (15 U.S.C. 1631 et seq.) is amended by adding at the end thereof the following new section:

“SEC. 137. HOME EQUITY PLANS.

15 USC 1647.

“(a) **INDEX REQUIREMENT.**—In the case of extensions of credit under an open end consumer credit plan which are subject to a variable rate and are secured by a consumer’s principal dwelling, the index or other rate of interest to which changes in the annual percentage rate are related shall be based on an index or rate of interest which is publicly available and is not under the control of the creditor.

“(b) **GROUND FOR ACCELERATION OF OUTSTANDING BALANCE.**—A creditor may not unilaterally terminate any account under an open end consumer credit plan under which extensions of credit are secured by a consumer’s principal dwelling and require the immediate repayment of any outstanding balance at such time, except in the case of—

“(1) fraud or material misrepresentation on the part of the consumer in connection with the account;

“(2) failure by the consumer to meet the repayment terms of the agreement for any outstanding balance; or

“(3) any other action or failure to act by the consumer which adversely affects the creditor’s security for the account or any right of the creditor in such security.

“(c) **CHANGE IN TERMS.**—

“(1) **IN GENERAL.**—No open end consumer credit plan under which extensions of credit are secured by a consumer’s principal dwelling may contain a provision which permits a creditor to change unilaterally any term required to be disclosed under section 127A(a) or any other term, except a change in insignificant terms such as the address of the creditor for billing purposes.

"(2) CERTAIN CHANGES NOT PRECLUDED.—Notwithstanding the provisions of subsection (1), a creditor may make any of the following changes:

"(A) Change the index and margin applicable to extensions of credit under such plan if the index used by the creditor is no longer available and the substitute index and margin would result in a substantially similar interest rate.

"(B) Prohibit additional extensions of credit or reduce the credit limit applicable to an account under the plan during any period in which the value of the consumer's principal dwelling which secures any outstanding balance is significantly less than the original appraisal value of the dwelling.

"(C) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the creditor has reason to believe that the consumer will be unable to comply with the repayment requirements of the account due to a material change in the consumer's financial circumstances.

"(D) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which the consumer is in default with respect to any material obligation of the consumer under the agreement.

"(E) Prohibit additional extensions of credit or reduce the credit limit applicable to the account during any period in which—

"(i) the creditor is precluded by government action from imposing the annual percentage rate provided for in the account agreement; or

"(ii) any government action is in effect which adversely affects the priority of the creditor's security interest in the account to the extent that the value of the creditor's secured interest in the property is less than 120 percent of the amount of the credit limit applicable to the account.

"(F) Any change that will benefit the consumer.

"(3) MATERIAL OBLIGATIONS.—Upon the request of the consumer and at the time an agreement is entered into by a consumer to open an account under an open end consumer credit plan under which extensions of credit are secured by the consumer's principal dwelling, the consumer shall be given a list of the categories of contract obligations which are deemed by the creditor to be material obligations of the consumer under the agreement for purposes of paragraph (2)(D).

"(4) CONSUMER BENEFIT.—

"(A) IN GENERAL.—For purposes of paragraph (2)(F), a change shall be deemed to benefit the consumer if the change is unequivocally beneficial to the borrower and the change is beneficial through the entire term of the agreement.

"(B) BOARD CATEGORIZATION.—The Board may, by regulation, determine categories of changes that benefit the consumer.

"(d) TERMS CHANGED AFTER APPLICATION.—If any term or condition described in section 127A(a) which is disclosed to a consumer in connection with an application to open an account under an open end consumer credit plan described in such section (other than a

variable feature of the plan) changes before the account is opened, and if, as a result of such change, the consumer elects not to enter into the plan agreement, the creditor shall refund all fees paid by the consumer in connection with such application.

“(e) ADDITIONAL REQUIREMENTS RELATING TO REFUNDS AND IMPOSITION OF NONREFUNDABLE FEES.—

“(1) IN GENERAL.—No nonrefundable fee may be imposed by a creditor or any other person in connection with any application by a consumer to establish an account under any open end consumer credit plan which provides for extensions of credit which are secured by a consumer's principal dwelling before the end of the 3-day period beginning on the date such consumer receives the disclosure required under section 127A(a) and the pamphlet required under section 127A(e) with respect to such application.

“(2) CONSTRUCTIVE RECEIPT.—For purposes of determining when a nonrefundable fee may be imposed in accordance with this subsection if the disclosures and pamphlet referred to in paragraph (1) are mailed to the consumer, the date of the receipt of the disclosures by such consumer shall be deemed to be 3 business days after the date of mailing by the creditor.”.

SEC. 4. CONSUMER EDUCATION.

15 USC 1637a
note.

The Board of Governors of the Federal Reserve System shall develop and prepare a pamphlet for distribution to consumers which contains—

(1) a general description of open end consumer credit plans secured by the consumer's principal dwelling and the terms and conditions under which such loans are generally extended; and

(2) a discussion of the potential advantages and disadvantages of such plans, including how to compare among home equity plans and between home equity and closed end credit plans.

SEC. 5. CLERICAL AMENDMENTS.

(a) CHAPTER 2.—The table of sections for chapter 2 of the Truth in Lending Act is amended—

(1) by inserting after the item relating to section 127 the following new item:

“127A. Disclosure requirements for open end consumer credit plans secured by the consumer's principal dwelling.”;

and

(2) by inserting after the item relating to section 136 the following new item:

“137. Home equity plans.”.

(b) CHAPTER 3.—The table of sections for chapter 3 of the Truth in Lending Act is amended by inserting after the item relating to section 146 the following new item:

“147. Advertising of open end consumer credit plans secured by the consumer's principal dwelling.”.

SEC. 6. ABILITY TO COMPARE PLANS.

(a) STUDY REQUIRED.—Before the end of the 6-month period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall conduct a study to determine whether the use of the same term, such as annual percentage rate, to describe the cost to the consumer for extensions

of credit under all forms of consumer credit plans may unduly mislead consumers with respect to the comparability of the various forms of such extensions of credit.

(b) **REPORT REQUIRED.**—At the conclusion of the study required under subsection (a), the Board of Governors of the Federal Reserve System shall submit a report to the Congress containing the Board's findings and conclusions in connection with such study and, if applicable, such recommendations for legislation or administrative action as the Board may determine to be appropriate, including, if appropriate, a new term to replace "annual percentage rate" or "corresponding nominal percentage rate".

15 USC 1637a
note.

SEC. 7. REGULATIONS AND EFFECTIVE DATE.

(a) **REGULATIONS.**—Before the end of the 60-day period beginning on the date of the enactment of this Act, the Board of Governors of the Federal Reserve System shall prescribe such regulations as may be necessary to carry out the proposes of the amendments made by this Act.

(b) **EFFECTIVE DATE.**—The amendments made by this Act, and the regulations prescribed pursuant to subsection (a) with respect to such amendments, shall apply to—

(1) any agreement to open an account under an open end consumer credit plan under which extensions of credit are secured by a consumer's principal dwelling which is entered into after the end of the 5-month period beginning on the date on which the regulations prescribed under subsection (a) become final; and

(2) any application to open such an account which is distributed by, or received by a creditor, after the end of such 5-month period.

(c) **VOLUNTARY COMPLIANCE.**—Notwithstanding subsection (b), any creditor may comply with the amendments made by this Act, in accordance with the regulations prescribed by the Board, before the effective date established under such subsection.

Approved November 23, 1988.

LEGISLATIVE HISTORY—H.R. 3011:

CONGRESSIONAL RECORD, Vol. 134 (1988):
June 20, considered and passed House.
Oct. 21, considered and passed Senate.