

106TH CONGRESS
2D SESSION

H.R. 4250

To amend the Home Ownership and Equity Protection Act of 1994 and other sections of the Truth in Lending Act to protect consumers against predatory practices in connection with high cost mortgage transactions, to strengthen the civil remedies available to consumers under existing law, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 12, 2000

Mr. LAFALCE (for himself, Mr. VENTO, Mr. FRANK of Massachusetts, Mr. KANJORSKI, Mrs. MALONEY of New York, Mr. GUTIERREZ, Mr. BENTSEN, Ms. CARSON, Mr. MEEKS of New York, Ms. SCHAKOWSKY, and Mrs. JONES of Ohio) introduced the following bill; which was referred to the Committee on Banking and Financial Services

A BILL

To amend the Home Ownership and Equity Protection Act of 1994 and other sections of the Truth in Lending Act to protect consumers against predatory practices in connection with high cost mortgage transactions, to strengthen the civil remedies available to consumers under existing law, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Predatory Lending
3 Consumer Protection Act of 2000”.

4 **SEC. 2. AMENDMENTS TO DEFINITIONS IN TRUTH IN LEND-**
5 **ING ACT.**

6 (a) HIGH COST MORTGAGES.—

7 (1) IN GENERAL.—The portion of section
8 103(aa) of the Truth in Lending Act (15 U.S.C.
9 1602(aa)) that precedes paragraph (2) of such sec-
10 tion is amended to read as follows:

11 “(aa) MORTGAGE REFERRED TO IN THIS SUB-
12 SECTION.—

13 “(1) DEFINITION.—

14 “(A) IN GENERAL.—A mortgage referred
15 to in this subsection means a consumer credit
16 transaction—

17 “(i) that is secured by the consumer’s
18 principal dwelling, other than a reverse
19 mortgage transaction; and

20 “(ii) the terms of which are described
21 in at least 1 of the following subclauses:

22 “(I) The transaction is secured
23 by a first mortgage on the consumer’s
24 principal dwelling and the annual per-
25 centage rate on the credit, at the con-
26 summation of the transaction, will ex-

1 ceed by more than 6 percentage
2 points the yield on Treasury securities
3 having comparable periods of maturity
4 on the 15th day of the month imme-
5 diately preceding the month in which
6 the application for the extension of
7 credit is received by the creditor;

8 “(II) The transaction is secured
9 by a junior or subordinate mortgage
10 on the consumer’s principal dwelling
11 and the annual percentage rate on the
12 credit, at the consummation of the
13 transaction, will exceed by more than
14 8 percentage points the yield on
15 Treasury securities having comparable
16 periods of maturity on the 15th day of
17 the month immediately preceding the
18 month in which the application for the
19 extension of credit is received by the
20 creditor.

21 “(III) The total points and fees
22 payable on the transaction will exceed
23 the greater of 5 percent of the total
24 loan amount or \$1,000.

“(B) INTRODUCTORY RATES NOT TAKEN INTO ACCOUNT.—If the terms of any consumer credit transaction that is secured by the consumer’s principal dwelling offer, for any initial or introductory period, an annual percentage rate of interest which—

“(i) is less than the annual percentage rate of interest which will apply after the end of such initial or introductory period; or

“(ii) in the case of an annual percentage rate which varies in accordance with an index, which is less than the current annual percentage rate under the index which will apply after the end of such period,

the annual percentage rate of interest that shall be taken into account for purposes of subclauses (I) and (II) of subparagraph (A)(ii) shall be the rate described in clause (i) or (ii) of this subparagraph rather than any rate in effect during the initial or introductory period.”.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 103(aa)(2) of the Truth in Lending Act (15 U.S.C. 1602(aa)(2)) is amended—

1 (A) by striking subparagraph (B); and

2 (B) by redesignating subparagraph (C) as
3 subparagraph (B).

4 (b) POINTS AND FEES.—Section 103(aa)(4) of the
5 Truth in Lending Act (15 U.S.C. 1602(aa)(4)) is
6 amended—

7 (1) by striking subparagraph (B) and inserting
8 the following new subparagraph:

9 “(B) all compensation paid directly or indi-
10 rectly by a consumer or a creditor to a mort-
11 gage broker;”;

12 (2) by redesignating subparagraph (D) as sub-
13 paragraph (F); and

14 (3) by striking subparagraph (C) and inserting
15 the following new subparagraphs:

16 “(C) each of the charges listed in section
17 106(e) (except an escrow for future payment of
18 taxes and insurance);

19 “(D) the cost of all premiums financed by
20 the lender, directly or indirectly, for any credit
21 life, credit disability, credit unemployment or
22 credit property insurance, or any other life or
23 health insurance, or any payments financed by
24 the lender, directly or indirectly, for any debt
25 cancellation or suspension agreement or con-

1 tract, except that, for purposes of this subpara-
2 graph, insurance premiums or debt cancellation
3 or suspension fees calculated and paid on a
4 monthly basis shall not be considered financed
5 by the lender;

6 “(E) any prepayment penalty (as defined
7 in section 129(c)(5)) or other fee paid by the
8 consumer in connection with an existing loan
9 which is being refinanced with the proceeds of
10 the consumer credit transaction; and”.

11 (c) HIGH COST MORTGAGE LENDER.—

12 (1) IN GENERAL.—Section 103(f) of the Truth
13 in Lending Act (15 U.S.C. 1602(f)) is amended by
14 striking the last sentence and inserting “Any person
15 who originates 2 or more mortgages referred to in
16 subsection (aa) in any 12-month period, any person
17 who originates 1 or more such mortgages through a
18 mortgage broker or acted as a mortgage broker be-
19 tween originators and consumers on more than 5
20 mortgages referred to in subsection (aa) within the
21 preceding 12-month period, and any creditor-affili-
22 ated party shall be considered to be a creditor for
23 purposes of this title.”.

24 (2) CREDITOR-AFFILIATED PARTY DEFINED.—

25 Section 103 of the Truth in Lending Act (15 U.S.C.

1 1602) is amended by adding at the end the following
 2 new subsection:

3 “(cc) CREDITOR-AFFILIATED PARTY.—The term
 4 ‘creditor-affiliated party’ means—

5 “(1) any director, officer, employee, or control-
 6 ling stockholder of, or agent for, a creditor;

7 “(2) in the case of a creditor which is an in-
 8 sured depository institution, any other person who
 9 has filed or is required to file a change-in-control no-
 10 tice with the appropriate Federal banking agency
 11 under section 7(j) of the Federal Deposit Insurance
 12 Act; and

13 “(3) any shareholder, consultant, joint venture
 14 partner, and any other person, including any inde-
 15 pendent contractor (such as an attorney, appraiser,
 16 or accountant), who participates in the conduct of
 17 the affairs of, or controls the lending practices of, a
 18 creditor, as determined (by regulation or on a case-
 19 by-case) by the appropriate Federal agency under
 20 subsection (a) or (c) of section 108 with respect to
 21 the creditor.”.

22 **SEC. 3. AMENDMENTS TO EXISTING REQUIREMENTS FOR**
 23 **HIGH COST CONSUMER MORTGAGES.**

24 (a) ADDITIONAL DISCLOSURES.—Section 129(a)(1)
 25 of the Truth in Lending Act (15 U.S.C. 1639(a)(1)) is

1 amended by adding at the end the following new subpara-
2 graphs:

3 “(D) The interest rate on this loan is
4 much higher than most people pay. This means
5 the chance that you will lose your home is much
6 higher if you do not make all payments under
7 the loan.

8 “(E) You may be able to get a loan with
9 a much lower interest rate. Before you sign any
10 papers, you have the right to go see a credit
11 and debt counseling service and to consult other
12 lenders to find ways to get a cheaper loan.

13 “(F) If you are taking out this loan to
14 repay other loans, look to see how many months
15 it will take to pay for this loan and what the
16 total amount is that you will have to pay before
17 this loan is repaid. Even though the total
18 amount you will have to pay each month for
19 this loan may be less than the total amount you
20 are paying each month for those other loans,
21 you may have to pay on this loan for many
22 more months than those other loans which will
23 cost you more money in the end.”.

1 (b) PREPAYMENT PENALTY PROVISIONS.—Section
2 129(c) of the Truth in Lending Act (15 U.S.C. 1639(c))
3 is amended to read as follows:

4 “(c) PREPAYMENT PENALTY PROVISIONS.—

5 “(1) NO PREPAYMENT PENALTIES AFTER END
6 OF 24-MONTH PERIOD.—A mortgage referred to in
7 section 103(aa) may not contain terms under which
8 a consumer must pay any prepayment penalty for
9 any payment made after the end of the 24-month
10 period beginning on the date the mortgage is con-
11 summated.

12 “(2) NO PREPAYMENT PENALTIES IF MORE
13 THAN 3 PERCENT OF POINTS AND FEES WERE FI-
14 NANCED.—Subject to subsection (1)(1), a mortgage
15 referred to in section 103(aa) may not contain terms
16 under which a consumer must pay any prepayment
17 penalty for any payment made at or before the end
18 of the 24-month period referred to in paragraph (1)
19 if the creditor financed points or fees in connection
20 with the consumer credit transaction in an amount
21 equal to or greater than 3 percent of the total
22 amount of credit extended in the transaction.

23 “(3) LIMITED PREPAYMENT PENALTY FOR
24 EARLY REPAYMENT UNDER CERTAIN CIR-
25 CUMSTANCES.—Subject to paragraph (2), the terms

1 of a mortgage referred to in section 103(aa) may
2 contain terms under which a consumer must pay a
3 prepayment penalty for any payment made at or be-
4 fore the end of the 24-month period referred to in
5 paragraph (1) to the extent the sum of total amount
6 of points or fees financed by the creditor, if any,
7 in connection with the consumer credit transaction
8 and the total amount payable as a prepayment pen-
9 alty does not exceed the amount which is equal to
10 3 percent of the total amount of credit extended in
11 the transaction.

12 “(4) CONSTRUCTION.—For purposes of this
13 subsection, any method of computing a refund of un-
14 earned scheduled interest is a prepayment penalty if
15 it is less favorable to the consumer than the actu-
16 arial method (as that term is defined in section
17 933(d) of the Housing and Community Development
18 Act of 1992).

19 “(5) PREPAYMENT PENALTY DEFINED.—The
20 term ‘prepayment penalty’ means any monetary pen-
21 alty imposed on a consumer for paying all or part
22 of the principal with respect to a consumer credit
23 transaction before the date on which the principal is
24 due.”.

1 (c) ALL BALLOON PAYMENTS PROHIBITED.—Section
2 129(e) of the Truth in Lending Act (15 U.S.C. 1639(e))
3 is amended by striking “having a term of less than 5
4 years”.

5 (d) ASSESSMENT OF ABILITY TO REPAY.—Section
6 129(h) of the Truth in Lending Act (15 U.S.C. 1639(h))
7 is amended—

8 (1) by striking “CONSUMER.—A creditor” and
9 inserting “CONSUMER.—

10 “(1) PROHIBITION ON PATTERNS AND PRAC-
11 TICES.—A creditor”; and

12 (2) by adding at the end the following new
13 paragraphs:

14 “(2) CASE-BY-CASE ASSESSMENTS OF CON-
15 SUMER ABILITY TO PAY REQUIRED.—

16 “(A) IN GENERAL.—In addition to the pro-
17 hibition in paragraph (1) on engaging in certain
18 patterns and practices, a creditor may not ex-
19 tend any credit in connection with any mort-
20 gage referred to in section 103(aa) unless the
21 creditor has determined, at the time such credit
22 is extended, that 1 or more of the resident obli-
23 gors, when considered individually and collec-
24 tively, will be able to make the scheduled pay-
25 ments under the terms of the transaction based

1 on a consideration of their current and expected
2 income, current obligations, employment status,
3 and other financial resources, without taking
4 into account any equity of any such obligor in
5 the dwelling which is the security for the credit.

6 “(B) REGULATIONS.—The Board shall
7 prescribe, by regulation the appropriate format
8 for determining a consumer’s ability to pay and
9 the criteria to be considered in making any
10 such determination.

11 “(C) RESIDENT OBLIGOR.—For purposes
12 of this paragraph, the term ‘resident obligor’
13 means an obligor for whom the dwelling secur-
14 ing the extension of credit is, or upon the con-
15 summation of the transaction will be, the prin-
16 cipal residence.

17 “(3) VERIFICATION.—The requirements of
18 paragraphs (1) and (2) shall not be deemed to have
19 been met unless any information relied upon by the
20 creditor for purposes of any such paragraph has
21 been verified by the creditor independently of infor-
22 mation provided by any resident obligor.”.

23 (e) REQUIREMENTS RELATING TO HOME IMPROVE-
24 MENT CONTRACTS.—Section 129(i) of the Truth in Lend-
25 ing Act (15 U.S.C. 1639(i)) is amended—

1 (1) by striking “IMPROVEMENT CONTRACTS.—
2 A creditor” and inserting “IMPROVEMENT CON-
3 TRACTS.—

4 “(1) IN GENERAL.—A creditor”; and

5 (2) by adding at the end the following new
6 paragraph:

7 “(2) AFFIRMATIVE CLAIMS AND DEFENSES.—

8 Notwithstanding any other provision of law, any as-
9 signee or holder, in any capacity, of a mortgage re-
10 ferred to in section 103(aa) which was made, ar-
11 ranged, or assigned by a person financing home im-
12 provements to the dwelling of a consumer shall be
13 subject to all affirmative claims and defenses which
14 the consumer may have against the seller, home im-
15 provement contractor, broker, or creditor with re-
16 spect to such mortgage or home improvements.”.

17 (f) CLARIFICATION OF RESCISSION RIGHTS.—Sec-
18 tion 129(j) of the Truth in Lending Act (15 U.S.C.
19 1639(j)) is amended to read as follows:

20 “(j) CONSEQUENCE OF FAILURE TO COMPLY.—

21 “(1) IN GENERAL.—If, in the case of a mort-
22 gage referred to in section 103(aa)—

23 “(A) the mortgage contains a provision
24 prohibited by this section or does not contain a
25 provision required by this section; or

1 “(B) a creditor or other person fails to
 2 comply with the provisions of this section,
 3 whether by an act or omission, with regard to
 4 such mortgage at any time,
 5 the consummation of the consumer credit trans-
 6 action resulting in such mortgage shall be treated as
 7 a failure to deliver the material disclosures required
 8 under this title for the purpose of section 125.

9 “(2) RULE OF APPLICATION.—In any applica-
 10 tion of section 125 to a mortgage described in sec-
 11 tion 103(aa) under circumstances described in para-
 12 graph (1), paragraphs (2) and (4) of section 125(e)
 13 shall not apply or be taken into account.”.

14 **SEC. 4. ADDITIONAL REQUIREMENTS FOR HIGH COST CON-**
 15 **SUMER MORTGAGES.**

16 (a) SINGLE PREMIUM CREDIT INSURANCE.—Section
 17 129 of the Truth in Lending Act (15 U.S.C. 1639) is
 18 amended—

19 (1) by redesignating subsections (k) and (l) as
 20 subsections (s) and (t), respectively; and

21 (2) by inserting after subsection (j), the fol-
 22 lowing new subsection:

23 “(k) SINGLE PREMIUM CREDIT INSURANCE.—

1 “(1) IN GENERAL.—The terms of a mortgage
2 referred to in section 103(aa) may not require, and
3 no creditor or other person may require or allow—

4 “(A) the advance collection of a premium,
5 on a single premium basis, for any credit life,
6 credit disability, credit unemployment, or credit
7 property insurance, and any analogous product;
8 or

9 “(B) the advance collection of a fee for any
10 debt cancellation or suspension agreement or
11 contract,

12 in connection with any such mortgage, whether such
13 premium or fee is paid directly by the consumer or
14 is financed by the consumer through such mortgage.

15 “(2) RULE OF CONSTRUCTION.—Paragraph (1)
16 shall not be construed as affecting the right of a
17 creditor to collect premium payments on insurance
18 or debt cancellation or suspension fees referred to in
19 paragraph (1) that are calculated and paid on a reg-
20 ular monthly basis, if the insurance transaction is
21 conducted separately from the mortgage transaction,
22 the insurance may be canceled by the consumer at
23 any time, and the insurance policy is automatically
24 canceled upon repayment or other termination of the
25 mortgage referred to in paragraph (1).”.

1 (b) RESTRICTION ON FINANCING POINTS AND
 2 FEES.—Section 129 of the Truth in Lending Act (15
 3 U.S.C. 1639) is amended by inserting after subsection (k)
 4 (as added by subsection (a) of this section) the following
 5 new subsection:

6 “(1) RESTRICTION ON FINANCING POINTS AND
 7 FEES.—

8 “(1) LIMIT ON AMOUNT OF POINTS AND FEES
 9 THAT MAY BE FINANCED.—Subject to paragraphs
 10 (2) and (3) of subsection (c), no creditor may, in
 11 connection with the formation or consummation of a
 12 mortgage referred to in section 103(aa), finance, di-
 13 rectly or indirectly, any portion of the points, fees,
 14 or other charges payable to the creditor or any third
 15 party in an amount in excess of the greater of 3 per-
 16 cent of the total loan amount or \$600.

17 “(2) PROHIBITION ON FINANCING CERTAIN
 18 POINTS, FEES, OR CHARGES.—No creditor may, in
 19 connection with the formation or consummation of a
 20 mortgage referred to in section 103(aa), finance, di-
 21 rectly or indirectly, any of the following fees or other
 22 charges payable to the creditor or any third party:

23 “(A) Any prepayment fee or penalty re-
 24 quired to be paid by the consumer in connection
 25 with a loan or other extension of credit which

1 is being refinanced by such mortgage if the
2 creditor, with respect to such mortgage, or any
3 affiliate of the creditor, is the creditor with re-
4 spect to the loan or other extension of credit
5 being refinanced.

6 “(B) Any points, fees, or other charges re-
7 quired to be paid by the consumer in connection
8 with such mortgage if—

9 “(i) the mortgage is being entered
10 into in order to refinance an existing mort-
11 gage of the consumer that is referred to in
12 section 103(aa); and

13 “(ii) if the creditor, with respect to
14 such new mortgage, or any affiliate of the
15 creditor, is the creditor with respect to the
16 existing mortgage which is being refi-
17 nanced.”.

18 (c) CREDITOR CALL PROVISION.—Section 129 of the
19 Truth in Lending Act (15 U.S.C. 1639) is amended by
20 inserting after subsection (l) (as added by subsection (b)
21 of this section) the following new subsection:

22 “(m) CREDITOR CALL PROVISION.—

23 “(1) IN GENERAL.—A mortgage referred to in
24 section 103(aa) may not include terms under which

1 the indebtedness may be accelerated by the creditor,
2 in the creditor's sole discretion.

3 “(2) EXCEPTION.—Paragraph (1) shall not
4 apply when repayment of the loan has been acceler-
5 ated as a result of a bona fide default.”.

6 (d) PROHIBITION ON ACTIONS ENCOURAGING DE-
7 FAULT.—Section 129 of the Truth in Lending Act (15
8 U.S.C. 1639) is amended by inserting after subsection (m)
9 (as added by subsection (c) of this section) the following
10 new subsection:

11 “(n) PROHIBITION ON ACTIONS ENCOURAGING DE-
12 FAULT.—No creditor may make any statement, take any
13 action, or fail to take any action before or in connection
14 with the formation or consummation of any mortgage re-
15 ferred to in section 103(aa) to refinance all or any portion
16 of an existing loan or other extension of credit, if the state-
17 ment, action, or failure to act has the effect of encour-
18 aging or recommending the consumer to default on the
19 existing loan or other extension of credit at any time be-
20 fore, or in connection with, the closing or any scheduled
21 closing on such mortgage.”.

22 (e) MODIFICATION OR DEFERRAL FEES.—Section
23 129 of the Truth in Lending Act (15 U.S.C. 1639) is
24 amended by inserting after subsection (n) (as added by

1 subsection (d) of this section) the following new sub-
2 section:

3 “(o) MODIFICATION OR DEFERRAL FEES.—

4 “(1) IN GENERAL.—Except as provided in para-
5 graph (2), a creditor may not charge any consumer
6 with respect to a mortgage referred to in section
7 103(aa) any fee or other charge—

8 “(A) to modify, renew, extend, or amend
9 such mortgage, or any provision of the terms of
10 the mortgage; or

11 “(B) to defer any payment otherwise due
12 under the terms of the mortgage.

13 “(2) EXCEPTION FOR MODIFICATIONS FOR THE
14 BENEFIT OF THE CONSUMER.—Paragraph (1) shall
15 not apply with respect to any fee imposed in connec-
16 tion with any action described in subparagraph (A)
17 or (B) if—

18 “(A) the action provides a material benefit
19 to the consumer; and

20 “(B) the amount of the fee or charge does
21 not exceed—

22 “(i) an amount equal to 0.5 percent of
23 the total loan amount; or

24 “(ii) in any case in which the total
25 loan amount of the mortgage does not ex-

1 ceed \$60,000, an amount in excess of
2 \$300.”.

3 (f) CONSUMER COUNSELING REQUIREMENTS.—Sec-
4 tion 129 of the Truth in Lending Act (15 U.S.C. 1639)
5 is amended by inserting after subsection (o) (as added by
6 subsection (e) of this section) the following new sub-
7 section:

8 “(p) CONSUMER COUNSELING REQUIREMENT.—

9 “(1) IN GENERAL.—A creditor may not extend
10 any credit in the form of a mortgage referred to in
11 section 103(aa) to any consumer, unless the creditor
12 has provided to the consumer, at such time before
13 the consummation of the mortgage and in such man-
14 ner as the Board shall provide by regulation, all of
15 the following:

16 “(A) All warnings and disclosures regard-
17 ing the risks of the mortgage to the consumer.

18 “(B) A separate written statement recom-
19 mending that the consumer take advantage of
20 available home ownership or credit counseling
21 services before agreeing to the terms of any
22 mortgage referred to in section 103(aa).

23 “(C) A written statement containing the
24 names, addresses, and telephone numbers of
25 counseling agencies or programs reasonably

1 available to the consumer that have been cer-
 2 tified or approved by the Secretary of Housing
 3 and Urban Development, a State housing fi-
 4 nance authority (as defined in section 1301 of
 5 the Financial Institutions Reform, Recovery,
 6 and Enforcement Act of 1989), or the agency
 7 referred to in subsection (a) or (c) of section
 8 108 with jurisdiction over the creditor as quali-
 9 fied to provide counseling on—

10 “(i) the advisability of a high cost
 11 loan transaction; and

12 “(ii) the appropriateness of a high
 13 cost loan for the consumer.

14 “(B) COMPLETE AND UPDATED LISTS RE-
 15 QUIRED.—Any failure to provide as complete or up-
 16 dated a list under paragraph (1)(C) as is reasonably
 17 possible shall constitute a violation of this section.”.

18 (g) ARBITRATION.—Section 129 of the Truth in
 19 Lending Act (15 U.S.C. 1639) is amended by inserting
 20 after subsection (p) (as added by subsection (f) of this
 21 section) the following new subsection:

22 “(q) ARBITRATION.—

23 “(1) IN GENERAL.—A mortgage referred to in
 24 section 103(aa) may not include terms which require
 25 arbitration or any other nonjudicial procedure as the

1 method for resolving any controversy or settling any
2 claims arising out of the transaction.

3 “(2) POST-CONTROVERSY AGREEMENTS.—Sub-
4 ject to paragraph (3), paragraph (1) shall not be
5 construed as limiting the right of the consumer and
6 the creditor to agree to arbitration or any other non-
7 judicial procedure as the method for resolving any
8 controversy at any time after a dispute or claim
9 under the transaction arises.

10 “(3) NO WAIVER OF STATUTORY CAUSE OF AC-
11 TION.—No provision of any mortgage referred to in
12 section 103(aa) or any agreement between the con-
13 sumer and the creditor shall be applied or inter-
14 preted so as to bar a consumer from bringing an ac-
15 tion in an appropriate district court of the United
16 States, or any other court of competent jurisdiction,
17 pursuant to section 130 or any other provision of
18 law, for damages or other relief in connection with
19 any alleged violation of this section, any other provi-
20 sion of this title, or any other Federal law.”.

21 (h) PROHIBITION ON EVASIONS.—Section 129 of the
22 Truth in Lending Act (15 U.S.C. 1639) is amended by
23 inserting after subsection (q) (as added by subsection (g)
24 of this section) the following new subsection:

1 “(r) PROHIBITIONS ON EVASIONS, STRUCTURING OF
2 TRANSACTIONS, AND RECIPROCAL ARRANGEMENTS.—

3 “(1) IN GENERAL.—A creditor may not take
4 any action—

5 “(A) for the purpose or with the intent to
6 circumvent or evade any requirement of this
7 title, including entering into a reciprocal ar-
8 rangement with any other creditor or affiliate of
9 another creditor or dividing a transaction into
10 separate parts, for the purpose of evading or
11 circumventing any such requirement; or

12 “(B) with regard to any other loan or ex-
13 tension of credit for the purpose or with the in-
14 tent to evade the requirements of this title, in-
15 cluding structuring or restructuring a consumer
16 credit transaction as another form of loan, such
17 as a business loan.

18 “(2) OTHER ACTIONS.—In addition to the ac-
19 tions prohibited under paragraph (1), a creditor may
20 not take any action which the Board determines, by
21 regulation, constitutes a bad faith effort to evade or
22 circumvent any requirement of this section with re-
23 gard to a consumer credit transaction.

24 “(3) REGULATIONS.—The Board shall prescribe
25 such regulations as the Board determines to be ap-

1 appropriate to prevent circumvention or evasion of the
2 requirements of this section or to facilitate compli-
3 ance with the requirements of this section.”.

4 **SEC. 5. AMENDMENTS RELATING TO RIGHT OF RESCIS-**
5 **SION.**

6 (a) **TIMING OF WAIVER BY CONSUMER.**—Section
7 125(a) of the Truth in Lending Act (15 U.S.C. 1635(a))
8 is amended—

9 (1) by striking “(a) Except as otherwise pro-
10 vided” and inserting “(a) **RIGHT ESTABLISHED.**—

11 “(1) **IN GENERAL.**—Except as otherwise pro-
12 vided”; and

13 (2) by adding at the end the following new
14 paragraph:

15 “(2) **TIMING OF ELECTION OF WAIVER BY CON-**
16 **SUMER.**—No election by a consumer to waive the
17 right established under paragraph (1) to rescind a
18 transaction shall be effective if—

19 “(A) the waiver was required by the cred-
20 itor as a condition for the transaction;

21 “(B) the creditor advised or encouraged
22 the consumer to waive such right of the con-
23 sumer; or

24 “(C) the creditor had any discussion with
25 the consumer about a waiver of such right dur-

1 ing the period beginning when the consumer
 2 provides written acknowledgement of the receipt
 3 of the disclosures and the delivery of forms and
 4 information required to be provided to the con-
 5 sumer under paragraph (1) and ending at such
 6 time as the Board determines, by regulation, to
 7 be appropriate.”.

8 (b) NONCOMPLIANCE WITH REQUIREMENTS AS
 9 RECOUPMENT IN FORECLOSURE PROCEEDING.—Section
 10 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e))
 11 is amended by inserting after the 2d sentence the following
 12 new sentence: “This subsection also does not bar a person
 13 from asserting a rescission under section 125, in an action
 14 to collect the debt as a defense to a judicial or nonjudicial
 15 foreclosure after the expiration of the time periods for af-
 16 firmative actions set forth in this section and section
 17 125.”.

18 **SEC. 6. AMENDMENTS TO CIVIL LIABILITY PROVISIONS.**

19 (a) INCREASE IN AMOUNT OF CIVIL MONEY PEN-
 20 ALTIES FOR CERTAIN VIOLATIONS.—Section 130(a) of
 21 the Truth in Lending Act (15 U.S.C. 1640) is amended—
 22 (1) in (2)(A)(iii), by striking “\$2,000” and in-
 23 serting “\$10,000”; and

(2) in paragraph (2)(B), by striking “ lesser of \$500,000 or 1 percentum of the net worth of the creditor” and inserting “the greater of—

“(i) the amount determined by multiplying the maximum amount of liability under subparagraph (A) for such failure to comply in an individual action by the number of members in the certified class; or

“(ii) the amount equal to 2 percent of the net worth of the creditor.”.

(b) STATUTE OF LIMITATIONS EXTENDED FOR SECTION 129 VIOLATIONS.—Section 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e)) (as amended by section 5(b) of this Act) is amended—

(1) in the 1st sentence, by striking “Any action” and inserting “Except as provided in the subsequent sentence, any action”; and

(2) by inserting after the 1st sentence the following new sentence: “Any action under this section with respect to any violation of section 129 may be brought in any United States district court, or in any other court of competent jurisdiction, before the end of the 3-year period beginning on the date of the occurrence of the violation.”.

1 **SEC. 7. AMENDMENT TO FAIR CREDIT REPORTING ACT.**

2 Section 623 of the Fair Credit Reporting Act (15
3 U.S.C. 1681s-2) is amended by adding at the end the fol-
4 lowing new subsection:

5 “(e) DUTY OF CREDITORS WITH RESPECT TO HIGH
6 COST MORTGAGES.—

7 “(1) IN GENERAL.—Each creditor who enters
8 into a consumer credit transaction which is a mort-
9 gage referred to in section 103(aa), and each suc-
10 cessor to such creditor with respect to such trans-
11 action, shall report the complete payment history,
12 favorable and unfavorable, of the obligor with re-
13 spect to such transaction to a consumer reporting
14 agency that compiles and maintains files on con-
15 sumers on a nationwide basis at least quarterly, or
16 more frequently as required by regulation or in
17 guidelines established by participants in the sec-
18 ondary mortgage market, while such transaction is
19 in effect.

20 “(2) DEFINITIONS.—For purposes of paragraph
21 (1), the terms ‘credit’ and ‘creditor’ have the same
22 meanings as in section 103.”.

23 **SEC. 8. REGULATIONS.**

24 The Board of Governors of the Federal Reserve Sys-
25 tem shall publish regulations implementing this Act, and
26 the amendments made by this Act, in final form before

- 1 the end of the 6-month period beginning on the date of
- 2 the enactment of this Act.

