

107TH CONGRESS
1ST SESSION

H. R. 2531

To amend the Truth in Lending Act, the Revised Statutes of the United States, the Home Mortgage Disclosure Act of 1975, and the amendments made by the Home Ownership and Equity Protection Act of 1994 to protect consumers from predatory lending practices, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JULY 17, 2001

Ms. SCHAKOWSKY (for herself, Mr. SANDERS, Mr. GUTIERREZ, Mr. JACKSON of Illinois, Mrs. CLAYTON, Mr. HINCHEY, Ms. NORTON, Mr. PAYNE, Mr. DAVIS of Illinois, Ms. MCKINNEY, Mr. RUSH, Ms. JACKSON-LEE of Texas, Mr. DEFAZIO, Ms. WATERS, Mr. JEFFERSON, and Mr. FILNER) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Truth in Lending Act, the Revised Statutes of the United States, the Home Mortgage Disclosure Act of 1975, and the amendments made by the Home Ownership and Equity Protection Act of 1994 to protect consumers from predatory lending practices, 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 “Save Our Homes Act”.

1 **SEC. 2. HOME MORTGAGE DISCLOSURE ACT AMENDMENTS.**

2 (a) STATUTORY REPORTING REQUIREMENTS.—

3 (1) IN GENERAL.—Section 304(b) of the Home
4 Mortgage Disclosure Act of 1975 (12 U.S.C.
5 2803(b)) is amended—6 (A) in paragraph (3), by striking “and”
7 after the semicolon;8 (B) in paragraph (4), by striking the pe-
9 riod at the end and inserting “; and”; and10 (C) by inserting after paragraph (4) the
11 following new paragraph:12 “(5) the annual percentage rate of mortgage
13 loans and other loans secured by residential real
14 property originated by the institution, and the
15 amount of fees and points imposed in connection
16 with the origination of such loans, grouped accord-
17 ing to census tract, income level, racial characteris-
18 tics, age, and gender.”.19 (2) CONFORMING AMENDMENTS.—The Home
20 Mortgage Disclosure Act of 1975 (12 U.S.C. 2801
21 et seq.) is amended—22 (A) in section 304(i), by striking “sub-
23 section (b)(4)” and inserting “paragraphs (4)
24 and (5) of subsection (b)”.

1 (B) in section 308, by striking “subsection
2 (b)(4)” and inserting “paragraphs (4) and (5)
3 of subsection (b)”.

4 (b) PROHIBITION ON REGULATORY EXEMPTIONS
5 FROM REPORTING REQUIREMENTS.—Section 304 of the
6 Home Mortgage Disclosure Act of 1975 (12 U.S.C. 2803)
7 is amended by adding at the end the following new sub-
8 section:

9 "(n) PROHIBITION ON REGULATORY EXEMPTIONS
10 FROM REPORTING REQUIREMENTS.—Subject to sub-
11 section (i)—

12 “(1) no provision of this title may be construed
13 as authorizing the Board, the Secretary, or any
14 other Federal agency to exempt any depository insti-
15 tution from the requirements of this title; and

16 “(2) any exemption from the requirements of
17 this title provided in any regulation, such as the ex-
18 emption provided in Appendix A to part 203 of the
19 Code of Federal Regulations for lending institutions
20 described in section 303(2)(B) whose total dollar
21 amount of purchase loans originated in any year did
22 not exceed 10 percent of the total dollar amount of
23 all loan originations by such institution in such year,
24 shall cease to be effective as of the date of the enact-
25 ment of the Anti-Predatory Lending Act of 2001.”.

1 **SEC. 3. TRUTH IN LENDING ACT AMENDMENTS.**

2 (a) APPLYING HIGH-COST LOAN PROTECTIONS TO
3 HOME PURCHASE LOANS AND LOWERING THE THRESH-
4 OLD FOR HIGH-COST LOANS.—Section 103(aa) of the
5 Truth in Lending Act (15 U.S.C. 1602(aa)(1)) is amended
6 by striking all that precedes paragraph (2) and inserting
7 the following:

8 “(aa) HIGH-COST MORTGAGE DEFINED.—

9 “(1) IN GENERAL.—The term ‘high-cost mort-
10 gage’, and a mortgage referred to in this subsection,
11 means a consumer credit transaction that is secured
12 by the consumer’s principal dwelling, other than a
13 reverse mortgage transaction, if any of the following
14 apply with respect to such consumer credit trans-
15 action:

16 “(A) The annual percentage rate at con-
17 summation of the transaction exceeds by 5 or
18 more percentage points the yield on United
19 States Treasury securities having comparable
20 periods of maturity (as made available by the
21 Board) as of the week immediately preceding
22 the week in which the interest rate for the loan
23 is established.

24 “(B) The mortgage is a variable-rate loan
25 in which the annual percentage rate can reason-

1 ably be expected to increase beyond the thresh-
2 old established in subparagraph (A).

3 “(C) Potential or scheduled increases in
4 the annual percentage rate of the home loan are
5 controlled by the creditor and not directly tied
6 to changes in a publicly available rate not con-
7 trolled by the creditor.

8 “(D) The total points and fees payable on
9 the transaction will exceed the greater of 3 per-
10 cent of the total loan amount or \$1,000.”.

11 (b) DEFINITION OF “POINTS AND FEES”.—Para-
12 graph (4) of section 103(aa) of the Truth in Lending Act
13 (15 U.S.C. 1602(aa)) is amended to read as follows:

14 “(4) DEFINITION OF POINTS AND FEES.—

15 “(A) IN GENERAL.—For purposes of para-
16 graph (1)(D) and section 129(q), the term
17 ‘points and fees’ shall include—

18 “(i) all items included in the finance
19 charge, except interest or the time-price
20 differential;

21 “(ii) all compensation paid directly or
22 indirectly to a mortgage broker, including
23 a broker that originates a loan in its own
24 name in a table-funded transaction;

1 “(iii) each of the charges listed in sec-
2 tion 106(e) (except an escrow for future
3 payment of taxes and insurance);

4 “(iv) the cost of all premiums fi-
5 nanced by the lender, directly or indirectly,
6 for any credit life, credit disability, credit
7 unemployment or credit property insur-
8 ance, or any other life or health insurance,
9 or any payments financed by the lender,
10 directly or indirectly, for any debt cancella-
11 tion or suspension agreement or contract,
12 except that, for purposes of this subpara-
13 graph, insurance premiums or debt can-
14 cellation or suspension fees calculated and
15 paid on a monthly basis shall not be con-
16 sidered financed by the lender;

17 “(v) any prepayment penalty (as de-
18 fined in section 129(c)(5)) or other fee
19 paid by the consumer in connection with
20 an existing loan which is being refinanced
21 with the proceeds of the consumer credit
22 transaction; and

23 “(vi) such other charges as the Board
24 determines to be appropriate.

1 “(B) ITEMS EXCLUDED.—For purposes of
2 paragraph (1)(D) and section 129(q), the term
3 ‘points and fees’ shall not include the following:

4 “(i) Taxes, filing fees, recording and
5 other charges and fees paid or to be paid
6 to public officials for determining the exist-
7 ence of or for perfecting, releasing, or sat-
8 isfying a security interest.

9 “(ii) Fees paid to a person other than
10 a creditor or an affiliate of the creditor or
11 to the mortgage broker or an affiliate of
12 the mortgage broker for any of the fol-
13 lowing:

14 “(I) Fees for flood certification.

15 “(II) Fees for pest infestation
16 and flood determinations.

17 “(III) Appraisal fees.

18 “(IV) Fees for inspections per-
19 formed prior to closing.

20 “(V) Credit reports.

21 “(VI) Surveys.

22 “(VII) Attorneys’ fees (if the bor-
23 rower has the right to select the attor-
24 ney from an approved list or other-
25 wise).

14 (c) COVERAGE OF MORTGAGE BROKERS.—

15 (1) IN GENERAL.—The last sentence of section
16 103(f) of the Truth in Lending Act (15 U.S.C.
17 1602(f)) is amended—

18 (A) by striking “or any person who” and
19 inserting a comma;

20 (B) by inserting after “through a mortgage
21 broker” the following: “, or acted as a mortgage
22 broker between originators and borrowers on
23 more than 5 home loans within the past 12-
24 month period.”.

1 (2) LIABILITY OF CREDITOR FOR VIOLATIONS

2 BY MORTGAGE BROKER.—Section 130 of the Truth
3 in Lending Act (15 U.S.C. 1640) is amended by
4 adding at the end the following new subsection:

5 “(j) LIABILITY OF CREDITOR FOR VIOLATIONS BY

6 MORTGAGE BROKER.—In the case of any credit extended

7 to a consumer by a creditor through a mortgage broker,

8 the creditor shall be liable under this section to the con-

9 sumer for any violation of any requirement of this title.

10 or regulations prescribed under this title, by the mortgage

11 broker in connection with such extension of credit.”

12 (d) PROHIBITED PRACTICES FOR HIGH-COST HOME

13. LOANS—Section 129 of the Truth in Lending Act (15)

14 U.S.C. 1639) is amended—

15 (1) in subsection (e) by striking “of less than

16 five years”;

17 (2) by striking subsections (c), (f), and (h);

18 (3) by redesignating subsections (d), (e), (g),

19 and (i) as subsections (c), (d), (e), and (f), respec-

20 tively; and

21 (4) by inserting after subsection (f) (as so re-

22 designated by paragraph (3) of this subsection) the

23 following new subsections:

1 “(1) IN GENERAL.—A high-cost mortgage may
2 not include terms under which the indebtedness may
3 be accelerated by the creditor, in the creditor’s sole
4 discretion.

5 “(2) EXCEPTION.—Paragraph (1) shall not
6 apply when repayment of the loan has been acceler-
7 ated by default or made pursuant to a due-on-sale
8 provision or some other provision of the loan docu-
9 ments unrelated to the payment schedule.

10 “(h) NO MODIFICATION OR DEFERRAL FEES.—A
11 creditor shall not charge a borrower any fees or other
12 charges to modify, renew, extend, or amend a high-cost
13 mortgage or to defer any payment due under any such
14 mortgage.

15 “(i) NO LENDING WITHOUT HOME-OWNERSHIP
16 COUNSELING.—A creditor shall not enter into a high-cost
17 mortgage without having received certification from a
18 housing counseling agency (which is certified by the De-
19 partment of Housing and Urban Development) that the
20 borrower has received counseling on the advisability of the
21 loan transaction and the appropriateness of the loan for
22 the borrower.

23 “(j) NO MANDATORY ARBITRATION CLAUSE.—A
24 high-cost mortgage may not include terms under which a

1 mandatory arbitration clause limits in any way the right
2 of the borrower to seek relief through the judicial process.

3 “(k) NO PREPAYMENT PENALTY.—

4 “(1) LIMITATION ON TERMS.—A high-cost
5 mortgage may not contain terms under which a con-
6 sumer must pay a prepayment penalty for paying all
7 or part of the principal before the date on which the
8 principal is due.

9 “(2) CONSTRUCTION.—For purposes of this
10 subsection, any method of computing a refund of un-
11 earned scheduled interest is a prepayment penalty if
12 it is less favorable to the consumer than the actu-
13 arial method (as that term is defined in section
14 933(d)(1) of the Housing and Community Develop-
15 ment Act of 1992).

16 “(l) NO NEGATIVE AMORTIZATION.—A high-cost
17 mortgage may not include terms under which the out-
18 standing principal balance will increase at any time over
19 the course of the loan because the regular periodic pay-
20 ments do not cover the full amount of interest due.

21 “(m) PROHIBITION ON EXTENDING CREDIT WITH-
22 OUT REGARD TO PAYMENT ABILITY OF CUSTOMER.—

23 “(1) IN GENERAL.—No creditor may make a
24 high-cost mortgage, unless the creditor reasonably
25 believes at the time the loan is consummated that 1

1 or more of the obligors, when considered individually
2 or collectively, will be able to make the scheduled
3 payments to repay the obligation based upon a con-
4 sideration of their current and expected income, cur-
5 rent obligations, employment status, and other fi-
6 nancial resources (other than the borrower's equity
7 in the dwelling which secures repayment of the
8 loan).

9 “(2) OBLIGOR DEFINED.—For purposes of
10 paragraph (1), the term ‘obligor’ means each bor-
11 rower, coborrower, cosigner, or guarantor obligated
12 to repay a loan.

13 “(n) PROHIBITION ON FLIPPING OF HOME LOANS.—

14 “(1) IN GENERAL.—No creditor may knowingly
15 or intentionally engage in the practice of flipping a
16 high-cost mortgage.

17 “(2) FLIPPING DEFINED.—For purposes of
18 paragraph (1), the term ‘flipping’ means the act of
19 making of a new high-cost mortgage to a borrower
20 to refinance an existing home loan when the new
21 loan does not have a reasonable, tangible net benefit
22 to the borrower considering all of the circumstances,
23 including the terms of both the new and refinanced
24 loans, the cost of the new loan, and the borrower’s
25 circumstances.

1 “(o) NO ENCOURAGEMENT OF DEFAULT.—No cred-
2 itor may recommend or encourage default on an existing
3 loan or other debt prior to and in connection with the clos-
4 ing or planned closing of a high-cost mortgage that refi-
5 nances all or any portion of such existing loan or debt.

6 “(p) NO FINANCING OF CREDIT INSURANCE.—

7 “(1) IN GENERAL.—No creditor may finance,
8 directly or indirectly, any credit life, credit disability,
9 or credit unemployment insurance, or any other life
10 or health insurance premiums through a high-cost
11 mortgage.

12 “(2) RULE OF CONSTRUCTION.—Paragraph (1)
13 shall not be construed as affecting the right of a
14 creditor to require the collection of insurance pre-
15 mium payments into an escrow account in conjunc-
16 tion with the servicing of a high-cost mortgage to
17 the extent the calculation and servicing of such in-
18 surance premiums are conducted and reported inde-
19 pendently of the high-cost mortgage.

20 “(q) RESTRICTION ON FINANCING POINTS AND
21 FEES.—

22 “(1) LIMIT ON AMOUNT OF POINTS AND FEES
23 THAT MAY BE FINANCED.—No creditor may, in con-
24 nection with the formation or consummation of a
25 high-cost mortgage, finance, directly or indirectly,

1 any portion of the points, fees, or other charges pay-
2 able to the creditor or any third party in an amount
3 in excess of the greater of 3 percent of the total loan
4 amount or \$600.

5 “(2) PROHIBITION ON FINANCING CERTAIN
6 POINTS, FEES, OR CHARGES.—No creditor may, in
7 connection with the formation or consummation of a
8 high-cost mortgage, finance, directly or indirectly,
9 any of the following fees or other charges payable to
10 the creditor or any third party:

11 “(A) Any prepayment fee or penalty re-
12 quired to be paid by the consumer in connection
13 with a loan or other extension of credit which
14 is being refinanced by such mortgage if the
15 creditor, with respect to such mortgage, or any
16 affiliate of the creditor, is the creditor with re-
17 spect to the loan or other extension of credit
18 being refinanced.

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

22 “(i) the mortgage is being entered
23 into in order to refinance an existing high-
24 cost mortgage of the consumer; and

1 “(ii) if the creditor, with respect to
2 such new mortgage, or any affiliate of the
3 creditor, is the creditor with respect to the
4 existing high-cost mortgage which is being
5 refinanced.

6 “(r) NO BLANK ITEMS.—A high-cost mortgage docu-
7 ment in which blanks are left to be filled in after the con-
8 tract is signed shall not be enforceable under Federal law
9 or the law of any State.

10 “(s) SAME LANGUAGE REQUIREMENT.—If the dis-
11 cussions between a creditor and a borrower or potential
12 borrower with respect to a high-cost mortgage are con-
13 ducted primarily in a language other than English, the
14 creditor shall, before closing, provide an additional copy
15 of all information required to be disclosed to the borrower
16 under this title translated into the language in which the
17 discussions were conducted.

18 “(t) ATTEMPTED EVASION OF COVERAGE.—The pro-
19 visions of this section shall apply to any person who in
20 bad faith attempts to avoid its application by—

21 “(1) structuring a loan transaction as an open
22 end credit plan for the purpose and with the intent
23 of evading the provisions of this section when the
24 loan would have been a high-cost mortgage if the
25 loan had been structured as a closed-end loan;

1 “(2) dividing any loan transaction into separate
2 parts for the purpose and with the intent of evading
3 the provisions of this section; or

4 “(3) engaging in any other such subterfuge for
5 the purpose of evading the provisions of this section.

6 “(u) CORRECTIONS AND UNINTENTIONAL VIOLA-
7 TIONS.—

8 “(1) IN GENERAL.—A creditor with respect to
9 a high-cost mortgage who, when acting in good
10 faith, fails to comply with this section, shall not be
11 deemed to have violated this section if the creditor
12 establishes that either—

13 “(A) within 30 days of the loan closing
14 and prior to the institution of any action under
15 this section, the borrower is notified of the com-
16 pliance failure, appropriate restitution is made,
17 and whatever adjustments are necessary are
18 made to the loan to either, at the choice of the
19 borrower—

20 “(i) make the high-cost home loan
21 satisfy the requirements of this section; or

22 “(ii) change the terms of the loan in
23 a manner beneficial to the borrower so that
24 the loan will no longer be considered a

3 “(B) the compliance failure was not inten-
4 tional and resulted from a bona fide error not-
5 withstanding the maintenance of procedures
6 reasonably adapted to avoid such errors, and
7 within 60 days after the discovery of the com-
8 pliance failure and prior to the institution of
9 any action under this section or the receipt of
10 written notice of the compliance failure, the
11 borrower is notified of the compliance failure,
12 appropriate restitution is made, and whatever
13 adjustments are necessary are made to the loan
14 to either, at the choice of the borrower—

22 “(2) BONA FIDE ERROR.—For purposes of
23 paragraph (1), examples of a bona fide error include
24 clerical, calculation, computer malfunction and pro-
25 gramming, and printing errors. An error of legal

1 judgment with respect to a person's obligations
2 under this section is not a bona fide error.”.

3 **SEC. 4. REQUIREMENTS FOR ALL CONFORMING HOME**
4 **LOANS.**

5 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
6 ing Act (15 U.S.C. 1601 et seq.) is amended by inserting
7 after section 129 the following new section:

8 **“SEC. 129A. REQUIREMENTS FOR ALL CONFORMING HOME**
9 **LOANS.**

10 “(a) DEFINITION OF CONFORMING HOME LOAN.—
11 For the purpose of this section, the term ‘conforming
12 home loan’ means a loan, other than an extension of credit
13 under an open end credit plan or a reverse mortgage
14 transaction, where—

15 “(1) the principal amount of the loan does not
16 exceed the conforming loan size limit for a single-
17 family dwelling as established from time to time by
18 the Federal National Mortgage Association;

19 “(2) the borrower is an individual or are indi-
20 viduals;

21 “(3) the debt is incurred by the borrower pri-
22 marily for personal, family, or household purposes;
23 and

24 “(4) the loan is secured by a mortgage or deed
25 of trust on real estate upon which there is located

1 or there is to be located a structure or structures de-
2 signed principally for occupancy of from 1 to 4 fami-
3 lies which is or will be occupied by the borrower as
4 the borrower's principal dwelling.

5 “(b) NO PAYMENTS TO APPRAISERS.—No creditor or
6 mortgage broker may compensate, directly or indirectly,
7 coerce, or intimidate an appraiser for the purpose of influ-
8 encing the independent judgment of the appraiser with re-
9 spect to the value of real estate that is to be covered by
10 a conforming home loan or is being offered as security
11 according to an application for a conforming home loan.

12 “(c) NONCOMPLIANT LOANS PROHIBITED FROM
13 MORTGAGE-BACKED SECURITY POOLS.—

14 “(1) ISSUANCE OF SECURITIES FROM TAINTED
15 POOLS PROHIBITED.—No person may issue a secu-
16 rity representing an interest in or an obligation
17 backed by a pool of mortgages, deeds of trust, or
18 other security interests created in connection with
19 consumer credit transactions secured by principal
20 dwellings of consumers if such person knows or has
21 reason to believe that any high-cost mortgage or
22 conforming home loan included in such pool violates
23 any provision of this section or section 129.

24 “(2) INCLUSION IN POOLS.—No creditor or
25 other person may knowingly include any high-cost

1 mortgage or conforming home loan that violates any
2 provision of this section or section 129 in any pool
3 described in paragraph (1).”.

4 (b) TECHNICAL AND CONFORMING AMENDMENTS.—

5 (1) The first sentence of section 130(a) of the
6 Truth in Lending Act (15 U.S.C. 1640(a)) is
7 amended, in the portion of such section that pre-
8 cedes paragraph (1), by inserting “, and to the ex-
9 tent subject to any requirement of this title, any
10 mortgage broker (including any person acting as a
11 mortgage broker),” after “any creditor”.

12 (2) Section 130(b) of the Truth in Lending Act
13 (15 U.S.C. 1640(b)) is amended—

14 (A) by striking “creditor or assignee” the
15 first place such term appears and inserting
16 “creditor, assignee, or, to the extent subject to
17 any requirement of this title, any mortgage
18 broker (including any person acting as a mort-
19 gage broker);”;

20 (B) by striking “creditor’s or assignee’s
21 own procedures” and inserting “creditor’s, as-
22 signee’s, or mortgage broker’s own procedure”;
23 and

1 (C) by striking “the creditor or assignee
2 notifies” and inserting “creditor, assignee, or
3 mortgage broker notifies”.

6 (A) by striking “creditor or assignee” the
7 first place such term appears and inserting
8 “creditor, assignee, or, to the extent subject to
9 any requirement of this title, any mortgage
10 broker (including any person acting as a mort-
11 gage broker);” and

12 (B) by striking “if the creditor or assignee
13 shows” and inserting “if the creditor, assignee,
14 or mortgage broker shows”.

19 (c) CLERICAL AMENDMENT.—The table of sections
20 for chapter 2 of the Truth in Lending Act (15 U.S.C.
21 1601 et seq.) is amended by inserting after the item relat-
22 ing to section 129 the following new item:

“129A. Requirements for all conforming home loans.”.

1 **SEC. 5. ALTERNATIVE MAXIMUM AMOUNT OF CIVIL LIABIL-**
2 **ITY FOR VIOLATIONS INVOLVING HIGH-COST**
3 **MORTGAGES AND CONFORMING LOANS.**

4 (e) ALTERNATIVE MAXIMUM AMOUNT OF CIVIL LI-
5 ABILITY.—Section 129 of the Truth in Lending Act (15
6 U.S.C. 1639) is amended by inserting after subsection (u)
7 (as added by section 3(d) of this Act) the following new
8 subsection:

9 “(v) ALTERNATIVE MAXIMUM AMOUNT OF CIVIL LI-
10 ABILITY.—Notwithstanding any maximum amount limita-
11 tion contained in section 130, any creditor, and to the ex-
12 tent subject to any requirement of this title, any mortgage
13 broker (including any person acting as a mortgage
14 broker), who fails to comply with section 129, in connec-
15 tion with any high-cost mortgage, or with section 129A,
16 in connection with any conforming loan, shall be liable
17 for—

18 “(1) in the case of an individual action, the
19 greater of—

20 “(A) the amount determined under section
21 130; or

22 “(B) the sum of the amount of the prin-
23 cipal and the total amount of all finance
24 charges and fees paid by the consumer with re-
25 spect to such mortgage or loan; and

1 “(2) in the case of a class action, the greater

2 of—

3 “(A) the amount determined under section

4 130; or

5 “(B) as to each member of the class in any
6 class action or series of class actions arising out
7 of the same failure to comply by the same cred-
8 itor, the sum of the amount of the principal and
9 the total amount of all finance charges and fees
10 paid by the consumer with respect to such
11 mortgage or loan.”.

12 **SEC. 6. EFFECTIVE DATE.**

13 (a) IN GENERAL.—Except as provided in subsection

14 (b), this Act and the amendments made by this Act shall

15 take effect at the end of the 90-day period beginning on

16 the date of the enactment of this Act.

17 (b) HMDA REQUIREMENTS.—Notwithstanding sub-

18 section (a), the amendments made by section 2 shall take

19 effect on January 1 of the first calendar year beginning

20 after the date of the enactment of this Act.

○