

107TH CONGRESS  
2D SESSION

# S. 2438

To amend 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.

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## IN THE SENATE OF THE UNITED STATES

MAY 1, 2002

Mr. SARBANES (for himself, Mr. DODD, Mr. SCHUMER, Ms. STABENOW, Mr. CORZINE, Mr. KERRY, Mr. KENNEDY, Mr. DURBIN, Ms. MIKULSKI, Mrs. CLINTON, Mrs. BOXER, Mr. WELLSTONE, Mr. TORRICELLI, Mr. DAYTON, and Mr. LEVIN) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## A BILL

To amend 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Predatory Lending  
5 Consumer Protection Act of 2002”.

1 **SEC. 2. TRUTH IN LENDING ACT DEFINITIONS.**

2 (a) HIGH COST MORTGAGES.—

3 (1) IN GENERAL.—The portion of section  
 4 103(aa) of the Truth in Lending Act (15 U.S.C.  
 5 1602(aa)) that precedes paragraph (2) is amended  
 6 to read as follows:

7 “(aa) MORTGAGE REFERRED TO IN THIS SUB-  
 8 SECTION.—

9 “(1) DEFINITION.—

10 “(A) IN GENERAL.—A mortgage referred  
 11 to in this subsection means a consumer credit  
 12 transaction—

13 “(i) that is secured by the principal  
 14 dwelling of the consumer, other than a re-  
 15 verse mortgage transaction; and

16 “(ii) the terms of which provide  
 17 that—

18 “(I) the transaction is secured by  
 19 a first mortgage on the principal  
 20 dwelling of the consumer, and the an-  
 21 nual percentage rate on the credit, at  
 22 the consummation of the transaction,  
 23 will exceed by more than 6 percentage  
 24 points the yield on Treasury securities  
 25 having comparable periods of maturity  
 26 on the 15th day of the month imme-

diately preceding the month in which  
the application for the extension of  
credit is received by the creditor;

“(II) the transaction is secured  
by a junior or subordinate mortgage  
on the principal dwelling of the con-  
sumer, and the annual percentage  
rate on the credit, at the consumma-  
tion of the transaction, will exceed by  
more than 8 percentage points the  
yield on Treasury securities having  
comparable periods of maturity on the  
15th day of the month immediately  
preceding the month in which the ap-  
plication for the extension of credit is  
received by the creditor; or

“(III) the total points and fees  
payable on the transaction will exceed  
the greater of 5 percent of the total  
loan amount, or \$1,000, excluding not  
more than 2 bona fide discount  
points.

“(B) INTRODUCTORY RATES NOT TAKEN  
INTO ACCOUNT.—For purposes of subparagraph

1 (A)(ii), the annual percentage rate of interest  
2 shall be determined—

3 “(i) in the case of a fixed-rate loan in  
4 which the annual percentage rate will not  
5 vary during the term of the loan, as the  
6 rate in effect on the date of consummation  
7 of the transaction;

8 “(ii) in the case of a loan in which the  
9 rate of interest varies according to an  
10 index, or is less than the rate of interest  
11 which will apply after the end of an initial  
12 or introductory period, by adding the index  
13 rate in effect on the date of consummation  
14 of the transaction to the maximum margin  
15 permitted at any time during the loan  
16 agreement; and

17 “(iii) in the case of any other loan in  
18 which the rate may vary at any time dur-  
19 ing the term of the loan for any reason, by  
20 including in the finance charge component  
21 of the annual percentage rate—

22 “(I) the interest charged on the  
23 loan at the maximum rate that may  
24 be charged during the term of the  
25 loan; and

1                   “(II) any other applicable  
2                   charges that would otherwise be in-  
3                   cluded in accordance with section  
4                   106.”.

5                   (2) TECHNICAL AND CONFORMING AMEND-  
6                   MENT.—Section 103(aa)(2) of the Truth in Lending  
7                   Act (15 U.S.C. 1602(aa)(2)) is amended—

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

9                   (B) by redesignating subparagraph (C) as  
10                  subparagraph (B).

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

14                  (1) by striking subparagraph (B) and inserting  
15                  the following:

16                         “(B) all compensation paid directly or indi-  
17                         rectly by a consumer or a creditor to a mort-  
18                         gage broker;”;

19                  (2) by redesignating subparagraph (D) as sub-  
20                  paragraph (G); and

21                  (3) by striking subparagraph (C) and inserting  
22                  the following:

23                         “(C) each of the charges listed in section  
24                         106(e) (except an escrow for future payment of  
25                         taxes and insurance);

1           “(D) the cost of all premiums financed by  
 2           the lender, directly or indirectly, for any credit  
 3           life, credit disability, credit unemployment or  
 4           credit property insurance, or any other life or  
 5           health insurance, or any payments financed by  
 6           the lender, directly or indirectly, for any debt  
 7           cancellation or suspension agreement or con-  
 8           tract, except that, for purposes of this subpara-  
 9           graph, insurance premiums or debt cancellation  
 10          or suspension fees calculated and paid on a  
 11          monthly basis shall not be considered financed  
 12          by the lender;

13           “(E) the maximum prepayment penalties  
 14          that may be charged or collected under the  
 15          terms of the loan documents;

16           “(F) all prepayment fees or penalties that  
 17          are charged to the borrower if the loan refi-  
 18          nances a previous loan made by the same cred-  
 19          itor or an affiliate of that creditor; and”.

20          (c) HIGH COST MORTGAGE LENDER.—Section  
 21          103(f) of the Truth in Lending Act (15 U.S.C. 1602(f))  
 22          is amended by striking the last sentence and inserting  
 23          “Any person who originates 2 or more mortgages referred  
 24          to in subsection (aa) in any 12-month period, any person  
 25          who originates 1 or more such mortgages through a mort-

1 gage broker or acted as a mortgage broker between origi-  
 2 nators and consumers on more than 5 mortgages referred  
 3 to in subsection (aa) within the preceding 12-month pe-  
 4 riod, and any creditor-affiliated party shall be considered  
 5 to be a creditor for purposes of this title.”.

6 (d) BONA FIDE DISCOUNT POINTS AND BENCHMARK  
 7 RATE DEFINED.—Section 103 of the Truth in Lending  
 8 Act (15 U.S.C. 1602) is amended by adding at the end  
 9 the following:

10 “(cc) OTHER INTEREST RATE RELATED TERMS.—

11 “(1) BENCHMARK RATE.—The term ‘bench-  
 12 mark rate’ means an interest rate that the borrower  
 13 may reduce by paying bona fide discount points, not  
 14 to exceed the weekly average yield of United States  
 15 Treasury securities having a maturity of 5 years, on  
 16 the 15th day of the month immediately preceding  
 17 the month in which the loan is made, plus 5 percent-  
 18 age points.

19 “(2) BONA FIDE DISCOUNT POINTS.—The term  
 20 ‘bona fide discount points’ means loan discount  
 21 points which are—

22 “(A) knowingly paid by the borrower;

23 “(B) paid for the express purpose of low-  
 24 ering the benchmark rate;

1 “(C) in fact reducing the interest rate or  
 2 time-price differential applicable to the loan  
 3 from an interest rate which does not exceed the  
 4 benchmark rate; and

5 “(D) recouped within the first 4 years of  
 6 the scheduled loan payments.

7 “(3) RECOUPMENT.—For purposes of para-  
 8 graph (2)(D), loan discount points shall be consid-  
 9 ered to be recouped within the first 4 years of the  
 10 scheduled loan payments if the reduction in the in-  
 11 terest rate that is achieved by the payment of the  
 12 loan discount points reduces the interest charged on  
 13 the scheduled payments, such that the dollar amount  
 14 of savings in payments made by the borrower over  
 15 the first 4 years is equal to or exceeds the dollar  
 16 amount of loan discount points paid by the bor-  
 17 rower.”.

18 **SEC. 3. AMENDMENTS TO EXISTING REQUIREMENTS FOR**  
 19 **HIGH COST CONSUMER MORTGAGES.**

20 (a) ADDITIONAL DISCLOSURES.—Section 129(a)(1)  
 21 of the Truth in Lending Act (15 U.S.C. 1639(a)(1)) is  
 22 amended by adding at the end the following:

23 “(C) ‘The interest rate on this loan is  
 24 much higher than most people pay. This means  
 25 the chance that you will lose your home is much



1 higher if you do not make all payments under  
2 the loan.’.

3 “(D) ‘You may be able to get a loan with  
4 a much lower interest rate. Before you sign any  
5 papers, you have the right to go see a housing  
6 or consumer credit counseling agency, as well  
7 as to consult other lenders to find ways to get  
8 a cheaper loan.’.

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

20 (b) PREPAYMENT PENALTY PROVISIONS.—Section  
21 129(c) of the Truth in Lending Act (15 U.S.C. 1639(c))  
22 is amended to read as follows:

23 “(c) PREPAYMENT PENALTY PROVISIONS.—

24 “(1) NO PREPAYMENT PENALTIES AFTER END  
25 OF 24-MONTH PERIOD.—A mortgage referred to in

1 section 103(aa) may not contain terms under which  
2 a consumer must pay any prepayment penalty for  
3 any payment made after the end of the 24-month  
4 period beginning on the date the mortgage is con-  
5 summated.

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

17 “(3) LIMITED PREPAYMENT PENALTY FOR  
18 EARLY REPAYMENT UNDER CERTAIN CIR-  
19 CUMSTANCES.—Subject to paragraph (2), the terms  
20 of a mortgage referred to in section 103(aa) may  
21 contain terms under which a consumer must pay a  
22 prepayment penalty for any payment made at or be-  
23 fore the end of the 24-month period referred to in  
24 paragraph (1) to the extent that the sum of the total  
25 amount of points or fees financed by the creditor, if

1       any, in connection with the consumer credit trans-  
2       action and the total amount payable as a prepay-  
3       ment penalty does not exceed the amount which is  
4       equal to 3 percent of the total amount of credit ex-  
5       tended in the transaction.

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

13              “(5) PREPAYMENT PENALTY DEFINED.—The  
14      term ‘prepayment penalty’ means any monetary pen-  
15      alty imposed on a consumer for paying all or part  
16      of the principal with respect to a consumer credit  
17      transaction before the date on which the principal is  
18      due.”.

19              (c) ALL BALLOON PAYMENTS PROHIBITED.—Section  
20      129(e) of the Truth in Lending Act (15 U.S.C. 1639(e))  
21      is amended by striking “having a term of less than 5  
22      years”.

23              (d) ASSESSMENT OF ABILITY TO REPAY.—Section  
24      129(h) of the Truth in Lending Act (15 U.S.C. 1639(h))  
25      is amended—

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

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

5 (2) by adding at the end the following:

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

8 “(A) IN GENERAL.—In addition to the pro-  
 9 hibition in paragraph (1) on engaging in certain  
 10 patterns and practices, a creditor may not ex-  
 11 tend any credit in connection with any mort-  
 12 gage referred to in section 103(aa) unless the  
 13 creditor has determined, at the time such credit  
 14 is extended, that 1 or more of the resident obli-  
 15 gors, when considered individually and collec-  
 16 tively, will be able to make the scheduled pay-  
 17 ments under the terms of the transaction based  
 18 on a consideration of the current and expected  
 19 income, current obligations, employment status,  
 20 and other financial resources of any such obli-  
 21 gor, without taking into account any equity of  
 22 any such obligor in the dwelling which is the se-  
 23 curity for the credit.

24 “(B) REGULATIONS.—The Board shall  
 25 prescribe, by regulation, the appropriate format

1 for determining the ability of a consumer to  
 2 make payments and the criteria to be consid-  
 3 ered in making that determination.

4 “(C) RESIDENT OBLIGOR.—For purposes  
 5 of this paragraph, the term ‘resident obligor’  
 6 means an obligor for whom the dwelling secur-  
 7 ing the extension of credit is, or upon the con-  
 8 summation of the transaction will be, the prin-  
 9 cipal residence.

10 “(3) VERIFICATION.—The requirements of  
 11 paragraphs (1) and (2) shall not be deemed to have  
 12 been met unless any information relied upon by the  
 13 creditor for purposes of any such paragraph has  
 14 been verified by the creditor independently of infor-  
 15 mation provided by any resident obligor.”.

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

19 (1) by striking “IMPROVEMENT CONTRACTS.—  
 20 A creditor” and inserting “IMPROVEMENT CON-  
 21 TRACTS.—

22 “(1) IN GENERAL.—A creditor”; and

23 (2) by adding at the end the following:

24 “(2) AFFIRMATIVE CLAIMS AND DEFENSES.—

25 Notwithstanding any other provision of law, any as-

1       signee or holder, in any capacity, of a mortgage re-  
 2       ferred to in section 103(aa) which was made, ar-  
 3       ranged, or assigned by a person financing home im-  
 4       provements to the dwelling of a consumer shall be  
 5       subject to all affirmative claims and defenses which  
 6       the consumer may have against the seller, home im-  
 7       provement contractor, broker, or creditor with re-  
 8       spect to such mortgage or home improvements.”.

9       (f) CLARIFICATION OF RESCISSION RIGHTS.—Sec-  
 10      tion 129(j) of the Truth in Lending Act (15 U.S.C.  
 11      1639(j)) is amended to read as follows:

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

13               “(1) IN GENERAL.—The consummation of a  
 14       consumer credit transaction resulting in a mortgage  
 15       referred to in section 103(aa) shall be treated as a  
 16       failure to deliver the material disclosures required  
 17       under this title for the purpose of section 125, if—

18               “(A) the mortgage contains a provision  
 19       prohibited by this section or does not contain a  
 20       provision required by this section; or

21               “(B) a creditor or other person fails to  
 22       comply with the provisions of this section,  
 23       whether by an act or omission, with regard to  
 24       such mortgage at any time.

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

6 **SEC. 4. ADDITIONAL REQUIREMENTS FOR HIGH COST CON-**  
 7 **SUMER MORTGAGES.**

8           (a) SINGLE PREMIUM CREDIT INSURANCE.—Section  
 9 129 of the Truth in Lending Act (15 U.S.C. 1639) is  
 10 amended—

11           (1) by redesignating subsections (k) and (l) as  
 12           subsections (s) and (t), respectively; and

13           (2) by inserting after subsection (j), the fol-  
 14           lowing:

15           “(k) SINGLE PREMIUM CREDIT INSURANCE.—

16           “(1) IN GENERAL.—The terms of a mortgage  
 17           referred to in section 103(aa) may not require, and  
 18           no creditor or other person may require or allow in  
 19           connection with any such mortgage, whether paid di-  
 20           rectly by the consumer or financed by the consumer  
 21           through such mortgage—

22           “(A) the advance collection of a premium,  
 23           on a single premium basis, for any credit life,  
 24           credit disability, credit unemployment, or credit

1 property insurance, and any analogous product;  
 2 or

3 “(B) the advance collection of a fee for any  
 4 debt cancellation or suspension agreement or  
 5 contract.

6 “(2) RULE OF CONSTRUCTION.—Paragraph (1)  
 7 shall not be construed as affecting the right of a  
 8 creditor to collect premium payments on insurance  
 9 or debt cancellation or suspension fees referred to in  
 10 paragraph (1) that are calculated and paid on a reg-  
 11 ular monthly basis, if the insurance transaction is  
 12 conducted separately from the mortgage transaction,  
 13 the insurance may be canceled by the consumer at  
 14 any time, and the insurance policy is automatically  
 15 canceled upon repayment or other termination of the  
 16 mortgage referred to in paragraph (1).”.

17 (b) RESTRICTION ON FINANCING POINTS AND  
 18 FEES.—Section 129 of the Truth in Lending Act (15  
 19 U.S.C. 1639) is amended by inserting after subsection (k)  
 20 (as added by subsection (a) of this section) the following:

21 “(l) RESTRICTION ON FINANCING POINTS AND  
 22 FEES.—

23 “(1) LIMIT ON AMOUNT OF POINTS AND FEES  
 24 THAT MAY BE FINANCED.—Subject to paragraphs  
 25 (2) and (3) of subsection (c), no creditor may, in



1 connection with the formation or consummation of a  
 2 mortgage referred to in section 103(aa), finance, di-  
 3 rectly or indirectly, any portion of the points, fees,  
 4 or other charges payable to the creditor or any third  
 5 party in an amount in excess of the greater of 3 per-  
 6 cent of the total loan amount or \$600.

7 “(2) PROHIBITION ON FINANCING CERTAIN  
 8 POINTS, FEES, OR CHARGES.—No creditor may, in  
 9 connection with the formation or consummation of a  
 10 mortgage referred to in section 103(aa), finance, di-  
 11 rectly or indirectly, any of the following fees or other  
 12 charges payable to the creditor or any third party:

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

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

24 “(i) the mortgage is being entered  
 25 into in order to refinance an existing mort-

1                   gage of the consumer that is referred to in  
2                   section 103(aa); and

3                   “(ii) if the creditor, with respect to  
4                   such new mortgage, or any affiliate of the  
5                   creditor, is the creditor with respect to the  
6                   existing mortgage which is being refi-  
7                   nanced.”.

8           (c) CREDITOR CALL PROVISION.—Section 129 of the  
9   Truth in Lending Act (15 U.S.C. 1639) is amended by  
10   inserting after subsection (l) (as added by subsection (b)  
11   of this section) the following:

12           “(m) CREDITOR CALL PROVISION.—

13                   “(1) IN GENERAL.—A mortgage referred to in  
14                   section 103(aa) may not include terms under which  
15                   the indebtedness may be accelerated by the creditor,  
16                   in the sole discretion of the creditor.

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

20           (d) PROHIBITION ON ACTIONS ENCOURAGING DE-  
21   FAULT.—Section 129 of the Truth in Lending Act (15  
22   U.S.C. 1639) is amended by inserting after subsection (m)  
23   (as added by subsection (c) of this section) the following:

24           “(n) PROHIBITION ON ACTIONS ENCOURAGING DE-  
25   FAULT.—No creditor may make any statement, take any

1 action, or fail to take any action before or in connection  
 2 with the formation or consummation of any mortgage re-  
 3 ferred to in section 103(aa) to refinance all or any portion  
 4 of an existing loan or other extension of credit, if the state-  
 5 ment, action, or failure to act has the effect of encour-  
 6 aging or recommending the consumer to default on the  
 7 existing loan or other extension of credit at any time be-  
 8 fore, or in connection with, the closing or any scheduled  
 9 closing on such mortgage.”.

10 (e) MODIFICATION OR DEFERRAL FEES.—Section  
 11 129 of the Truth in Lending Act (15 U.S.C. 1639) is  
 12 amended by inserting after subsection (n) (as added by  
 13 subsection (d) of this section) the following:

14 “(o) MODIFICATION OR DEFERRAL FEES.—

15 “(1) IN GENERAL.—Except as provided in para-  
 16 graph (2), a creditor may not charge any consumer  
 17 with respect to a mortgage referred to in section  
 18 103(aa) any fee or other charge—

19 “(A) to modify, renew, extend, or amend  
 20 such mortgage, or any provision of the terms of  
 21 the mortgage; or

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

24 “(2) EXCEPTION FOR MODIFICATIONS FOR THE  
 25 BENEFIT OF THE CONSUMER.—Paragraph (1) shall

1 not apply with respect to any fee imposed in connec-  
 2 tion with any action described in subparagraph (A)  
 3 or (B) if—

4 “(A) the action provides a material benefit  
 5 to the consumer; and

6 “(B) the amount of the fee or charge does  
 7 not exceed—

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

10 “(ii) in any case in which the total  
 11 loan amount of the mortgage does not ex-  
 12 ceed \$60,000, an amount in excess of  
 13 \$300.”.

14 (f) CONSUMER COUNSELING REQUIREMENTS.—Sec-  
 15 tion 129 of the Truth in Lending Act (15 U.S.C. 1639)  
 16 is amended by inserting after subsection (o) (as added by  
 17 subsection (e) of this section) the following:

18 “(p) CONSUMER COUNSELING REQUIREMENT.—

19 “(1) IN GENERAL.—A creditor may not extend  
 20 any credit in the form of a mortgage referred to in  
 21 section 103(aa) to any consumer, unless the creditor  
 22 has provided to the consumer, at such time before  
 23 the consummation of the mortgage and in such man-  
 24 ner as the Board shall provide by regulation—

1           “(A) all warnings and disclosures regard-  
2           ing the risks of the mortgage to the consumer;

3           “(B) a separate written statement recom-  
4           mending that the consumer take advantage of  
5           available home ownership or credit counseling  
6           services before agreeing to the terms of any  
7           mortgage referred to in section 103(aa); and

8           “(C) a written statement containing the  
9           names, addresses, and telephone numbers of  
10          counseling agencies or programs reasonably  
11          available to the consumer that have been cer-  
12          tified or approved by the Secretary of Housing  
13          and Urban Development, a State housing fi-  
14          nance authority (as defined in section 1301 of  
15          the Financial Institutions Reform, Recovery,  
16          and Enforcement Act of 1989), or the agency  
17          referred to in subsection (a) or (c) of section  
18          108 with jurisdiction over the creditor as quali-  
19          fied to provide counseling on—

20                 “(i) the advisability of a high cost  
21                 loan transaction; and

22                 “(ii) the appropriateness of a high  
23                 cost loan for the consumer.

24           “(2) COMPLETE AND UPDATED LISTS RE-  
25           QUIRED.—Any failure to provide as complete or up-

1       dated a list under paragraph (1)(C) as is reasonably  
2       possible shall constitute a violation of this section.”.

3       (g) ARBITRATION.—Section 129 of the Truth in  
4 Lending Act (15 U.S.C. 1639) is amended by inserting  
5 after subsection (p) (as added by subsection (f) of this  
6 section) the following:

7       “(q) ARBITRATION.—

8               “(1) IN GENERAL.—A mortgage referred to in  
9       section 103(aa) may not include terms which require  
10      arbitration or any other nonjudicial procedure as the  
11      method for resolving any controversy or settling any  
12      claims arising out of the transaction.

13             “(2) POST-CONTROVERSY AGREEMENTS.—Sub-  
14      ject to paragraph (3), paragraph (1) shall not be  
15      construed as limiting the right of the consumer and  
16      the creditor to agree to arbitration or any other non-  
17      judicial procedure as the method for resolving any  
18      controversy at any time after a dispute or claim  
19      under the transaction arises.

20             “(3) NO WAIVER OF STATUTORY CAUSE OF AC-  
21      TION.—No provision of any mortgage referred to in  
22      section 103(aa) or any agreement between the con-  
23      sumer and the creditor shall be applied or inter-  
24      preted so as to bar a consumer from bringing an ac-  
25      tion in an appropriate district court of the United

1 States, or any other court of competent jurisdiction,  
 2 pursuant to section 130 or any other provision of  
 3 law, for damages or other relief in connection with  
 4 any alleged violation of this section, any other provi-  
 5 sion of this title, or any other Federal law.”.

6 (h) PROHIBITION ON EVASIONS.—Section 129 of the  
 7 Truth in Lending Act (15 U.S.C. 1639) is amended by  
 8 inserting after subsection (q) (as added by subsection (g)  
 9 of this section) the following:

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

12 “(1) IN GENERAL.—A creditor may not take  
 13 any action—

14 “(A) for the purpose or with the intent to  
 15 circumvent or evade any requirement of this  
 16 title, including entering into a reciprocal ar-  
 17 rangement with any other creditor or affiliate of  
 18 another creditor or dividing a transaction into  
 19 separate parts, for the purpose of evading or  
 20 circumventing any such requirement; or

21 “(B) with regard to any other loan or ex-  
 22 tension of credit for the purpose or with the in-  
 23 tent to evade the requirements of this title, in-  
 24 cluding structuring or restructuring a consumer

1 credit transaction as another form of loan, such  
2 as a business loan.

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

9 “(3) REGULATIONS.—The Board shall prescribe  
10 such regulations as the Board determines to be ap-  
11 propriate to prevent circumvention or evasion of the  
12 requirements of this section or to facilitate compli-  
13 ance with the requirements of this section.”.

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

16 (a) TIMING OF WAIVER BY CONSUMER.—Section  
17 125(a) of the Truth in Lending Act (15 U.S.C. 1635(a))  
18 is amended—

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

21 “(1) IN GENERAL.—Except as otherwise pro-  
22 vided”; and

23 (2) by adding at the end the following:

24 “(2) TIMING OF ELECTION OF WAIVER BY CON-  
25 SUMER.—No election by a consumer to waive the



1 right established under paragraph (1) to rescind a  
 2 transaction shall be effective if—

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

5 “(B) the creditor advised or encouraged  
 6 the consumer to waive such right of the con-  
 7 sumer; or

8 “(C) the creditor had any discussion with  
 9 the consumer about a waiver of such right dur-  
 10 ing the period beginning when the consumer  
 11 provides written acknowledgement of the receipt  
 12 of the disclosures and the delivery of forms and  
 13 information required to be provided to the con-  
 14 sumer under paragraph (1) and ending at such  
 15 time as the Board determines, by regulation, to  
 16 be appropriate.”.

17 (b) NONCOMPLIANCE WITH REQUIREMENTS AS  
 18 RECOUPMENT IN FORECLOSURE PROCEEDING.—Section  
 19 130(e) of the Truth in Lending Act (15 U.S.C. 1640(e))  
 20 is amended by inserting after the second sentence the fol-  
 21 lowing: “This subsection also does not bar a person from  
 22 asserting a rescission under section 125, in an action to  
 23 collect the debt as a defense to a judicial or nonjudicial  
 24 foreclosure after the expiration of the time periods for af-

1 firmative actions set forth in this section and section  
2 125.”.

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

4 (a) INCREASE IN AMOUNT OF CIVIL MONEY PEN-  
5 ALTIES FOR CERTAIN VIOLATIONS.—Section 130(a) of  
6 the Truth in Lending Act (15 U.S.C. 1640(a)) is  
7 amended—

8 (1) in paragraph (2)(A)(iii), by striking  
9 “\$2,000” and inserting “\$10,000”; and

10 (2) in paragraph (2)(B), by striking “lesser of  
11 \$500,000 or 1 percentum of the net worth of the  
12 creditor” and inserting “the greater of—

13 “(i) the amount determined by multi-  
14 plying the maximum amount of liability  
15 under subparagraph (A) for such failure to  
16 comply in an individual action by the num-  
17 ber of members in the certified class; or

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

20 (b) STATUTE OF LIMITATIONS EXTENDED FOR SEC-  
21 TION 129 VIOLATIONS.—Section 130(e) of the Truth in  
22 Lending Act (15 U.S.C. 1640(e)) (as amended by section  
23 5(b) of this Act) is amended—

1           (1) in the first sentence, by striking “Any ac-  
 2           tion” and inserting “Except as provided in the sub-  
 3           sequent sentence, any action”; and

4           (2) by inserting after the first sentence the fol-  
 5           lowing: “Any action under this section with respect  
 6           to any violation of section 129 may be brought in  
 7           any United States district court, or in any other  
 8           court of competent jurisdiction, before the end of the  
 9           3-year period beginning on the date of the occur-  
 10          rence of the violation.”.

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

12          Section 623 of the Fair Credit Reporting Act (15  
 13          U.S.C. 1681s–2) is amended by adding at the end the fol-  
 14          lowing:

15          “(e) DUTY OF CREDITORS WITH RESPECT TO HIGH  
 16          COST MORTGAGES.—

17               “(1) IN GENERAL.—Each creditor who enters  
 18          into a consumer credit transaction which is a mort-  
 19          gage referred to in section 103(aa), and each suc-  
 20          cessor to such creditor with respect to such trans-  
 21          action, shall report the complete payment history,  
 22          favorable and unfavorable, of the obligor with re-  
 23          spect to such transaction to a consumer reporting  
 24          agency that compiles and maintains files on con-  
 25          sumers on a nationwide basis at least quarterly, or

1 more frequently as required by regulation or in  
2 guidelines established by participants in the sec-  
3 ondary mortgage market, while such transaction is  
4 in effect.

5 “(2) DEFINITIONS.—For purposes of paragraph  
6 (1), the term ‘credit’ and ‘creditor’ have the same  
7 meanings as in section 103 of the Truth in Lending  
8 Act (15 U.S.C. 1602).”.

9 **SEC. 8. REGULATIONS.**

10 The Board of Governors of the Federal Reserve Sys-  
11 tem shall publish regulations implementing this Act and  
12 the amendments made by this Act in final form before  
13 the end of the 6-month period beginning on the date of  
14 enactment of this Act.

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