

107TH CONGRESS  
1ST SESSION

# H. R. 1051

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.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2001

Mr. LAFALCE (for himself, Mr. KANJORSKI, Mrs. MALONEY of New York, Mr. GUTIERREZ, Ms. LEE, Mrs. JONES of Ohio, Mr. CAPUANO, Mr. CLAY, Mr. HINCHEY, Mr. ENGEL, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Financial Services

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## 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,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Predatory Lending  
5 Consumer Protection Act of 2001”.

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

3 (a) HIGH COST MORTGAGES.—

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

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

10 “(1) DEFINITION.—

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

14 “(i) that is secured by the consumer’s  
15 principal dwelling, other than a reverse  
16 mortgage transaction; and

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

19 “(I) The transaction is secured  
20 by a first mortgage on the consumer’s  
21 principal dwelling and the annual per-  
22 centage rate on the credit, at the con-  
23 summation of the transaction, will ex-  
24 ceed by more than 6 percentage  
25 points the yield on Treasury securities  
26 having comparable periods of maturity

1 on the 15th day of the month imme-  
2 diately preceding the month in which  
3 the application for the extension of  
4 credit is received by the creditor;

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

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

22 “(B) INTRODUCTORY RATES NOT TAKEN  
23 INTO ACCOUNT.—If the terms of any consumer  
24 credit transaction that is secured by the con-  
25 sumer’s principal dwelling offer, for any initial

1 or introductory period, an annual percentage  
2 rate of interest which—

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

7 “(ii) in the case of an annual percent-  
8 age rate which varies in accordance with  
9 an index, which is less than the current  
10 annual percentage rate under the index  
11 which will apply after the end of such pe-  
12 riod,

13 the annual percentage rate of interest that shall  
14 be taken into account for purposes of sub-  
15 clauses (I) and (II) of subparagraph (A)(ii)  
16 shall be the rate described in clause (i) or (ii)  
17 of this subparagraph rather than any rate in ef-  
18 fect during the initial or introductory period.”.

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

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

23 (B) by redesignating subparagraph (C) as  
24 subparagraph (B).

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

4 (1) by striking subparagraph (B) and inserting  
5 the following new subparagraph:

6 “(B) all compensation paid directly or indi-  
7 rectly by a consumer or a creditor to a mort-  
8 gage broker;”;

9 (2) by redesignating subparagraph (D) as sub-  
10 paragraph (F); and

11 (3) by striking subparagraph (C) and inserting  
12 the following new subparagraphs:

13 “(C) each of the charges listed in section  
14 106(e) (except an escrow for future payment of  
15 taxes and insurance);

16 “(D) the cost of all premiums financed by  
17 the lender, directly or indirectly, for any credit  
18 life, credit disability, credit unemployment or  
19 credit property insurance, or any other life or  
20 health insurance, or any payments financed by  
21 the lender, directly or indirectly, for any debt  
22 cancellation or suspension agreement or con-  
23 tract, except that, for purposes of this subpara-  
24 graph, insurance premiums or debt cancellation  
25 or suspension fees calculated and paid on a

1           monthly basis shall not be considered financed  
2           by the lender;

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

8           (c) HIGH COST MORTGAGE LENDER.—

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

21          (2) CREDITOR-AFFILIATED PARTY DEFINED.—  
22          Section 103 of the Truth in Lending Act (15 U.S.C.  
23          1602) is amended by adding at the end the following  
24          new subsection:

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

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

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

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

20 **SEC. 3. AMENDMENTS TO EXISTING REQUIREMENTS FOR**  
21 **HIGH COST CONSUMER MORTGAGES.**

22 (a) ADDITIONAL DISCLOSURES.—Section 129(a)(1)  
23 of the Truth in Lending Act (15 U.S.C. 1639(a)(1)) is  
24 amended by adding at the end the following new subpara-  
25 graphs:

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

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

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

22           (b) PREPAYMENT PENALTY PROVISIONS.—Section  
23 129(e) of the Truth in Lending Act (15 U.S.C. 1639(e))  
24 is amended to read as follows:

25           “(c) PREPAYMENT PENALTY PROVISIONS.—

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

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

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

1 paragraph (1) to the extent the sum of total amount  
2 of points or fees financed by the creditor, if any,  
3 in connection with the consumer credit transaction  
4 and the total amount payable as a prepayment pen-  
5 alty does not exceed the amount which is equal to  
6 3 percent of the total amount of credit extended in  
7 the transaction.

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

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

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

1 (d) ASSESSMENT OF ABILITY TO REPAY.—Section  
2 129(h) of the Truth in Lending Act (15 U.S.C. 1639(h))  
3 is amended—

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

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

8 (2) by adding at the end the following new  
9 paragraphs:

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

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

1           into account any equity of any such obligor in  
2           the dwelling which is the security for the credit.

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

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

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

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

23                 (1) by striking “IMPROVEMENT CONTRACTS.—  
24                 A creditor” and inserting “IMPROVEMENT CON-  
25                 TRACTS.—

1 “(1) IN GENERAL.—A creditor”; and

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

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

14 (f) CLARIFICATION OF RESCISSION RIGHTS.—Sec-  
15 tion 129(j) of the Truth in Lending Act (15 U.S.C.  
16 1639(j)) is amended to read as follows:

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

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

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

23 “(B) a creditor or other person fails to  
24 comply with the provisions of this section,

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

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

12 **SEC. 4. ADDITIONAL REQUIREMENTS FOR HIGH COST CON-**  
13 **SUMER MORTGAGES.**

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

17           (1) by redesignating subsections (k) and (l) as  
18           subsections (s) and (t), respectively; and

19           (2) by inserting after subsection (j), the fol-  
20           lowing new subsection:

21          “(k) SINGLE PREMIUM CREDIT INSURANCE.—

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

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

6           “(B) the advance collection of a fee for any  
7           debt cancellation or suspension agreement or  
8           contract,  
9           in connection with any such mortgage, whether such  
10          premium or fee is paid directly by the consumer or  
11          is financed by the consumer through such mortgage.

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

23          (b) RESTRICTION ON FINANCING POINTS AND  
24          FEES.—Section 129 of the Truth in Lending Act (15  
25          U.S.C. 1639) is amended by inserting after subsection (k)

1 (as added by subsection (a) of this section) the following  
2 new subsection:

3 “(1) RESTRICTION ON FINANCING POINTS AND  
4 FEES.—

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

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

20 “(A) Any prepayment fee or penalty re-  
21 quired to be paid by the consumer in connection  
22 with a loan or other extension of credit which  
23 is being refinanced by such mortgage if the  
24 creditor, with respect to such mortgage, or any  
25 affiliate of the creditor, is the creditor with re-

1           spect to the loan or other extension of credit  
2           being refinanced.

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

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

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

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

19           “(m) CREDITOR CALL PROVISION.—

20                   “(1) IN GENERAL.—A mortgage referred to in  
21                   section 103(aa) may not include terms under which  
22                   the indebtedness may be accelerated by the creditor,  
23                   in the creditor’s sole discretion.

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

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

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

20           (e) MODIFICATION OR DEFERRAL FEES.—Section  
21 129 of the Truth in Lending Act (15 U.S.C. 1639) is  
22 amended by inserting after subsection (n) (as added by  
23 subsection (d) of this section) the following new sub-  
24 section:

25           “(o) MODIFICATION OR DEFERRAL FEES.—

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

5                   “(A) to modify, renew, extend, or amend  
6                   such mortgage, or any provision of the terms of  
7                   the mortgage; or

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

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

15                   “(A) the action provides a material benefit  
16                   to the consumer; and

17                   “(B) the amount of the fee or charge does  
18                   not exceed—

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

21                           “(ii) in any case in which the total  
22                           loan amount of the mortgage does not ex-  
23                           ceed \$60,000, an amount in excess of  
24                           \$300.”.

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

6           “(p) CONSUMER COUNSELING REQUIREMENT.—

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

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

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

21                           “(C) A written statement containing the  
22 names, addresses, and telephone numbers of  
23 counseling agencies or programs reasonably  
24 available to the consumer that have been cer-  
25 tified or approved by the Secretary of Housing

1 and Urban Development, a State housing fi-  
2 nance authority (as defined in section 1301 of  
3 the Financial Institutions Reform, Recovery,  
4 and Enforcement Act of 1989), or the agency  
5 referred to in subsection (a) or (c) of section  
6 108 with jurisdiction over the creditor as quali-  
7 fied to provide counseling on—

8 “(i) the advisability of a high cost  
9 loan transaction; and

10 “(ii) the appropriateness of a high  
11 cost loan for the consumer.

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

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

20 “(q) ARBITRATION.—

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

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

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

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

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

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

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

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

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

22           “(3) REGULATIONS.—The Board shall prescribe  
23 such regulations as the Board determines to be ap-  
24 propriate to prevent circumvention or evasion of the

1 requirements of this section or to facilitate compli-  
2 ance with the requirements of this section.”.

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (1) in (2)(A)(iii), by striking “\$2,000” and in-  
22 serting “\$10,000”; and

23 (2) in paragraph (2)(B), by striking “ lesser of  
24 \$500,000 or 1 percentum of the net worth of the  
25 creditor” and inserting “the greater of—

1           “(i) the amount determined by multi-  
2           plying the maximum amount of liability  
3           under subparagraph (A) for such failure to  
4           comply in an individual action by the num-  
5           ber of members in the certified class; or

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

8           (b) STATUTE OF LIMITATIONS EXTENDED FOR SEC-  
9           TION 129 VIOLATIONS.—Section 130(e) of the Truth in  
10          Lending Act (15 U.S.C. 1640(e)) (as amended by section  
11          5(b) of this Act) is amended—

12           (1) in the 1st sentence, by striking “Any ac-  
13           tion” and inserting “Except as provided in the sub-  
14           sequent sentence, any action”; and

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

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

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

1       “(e) DUTY OF CREDITORS WITH RESPECT TO HIGH  
2 COST MORTGAGES.—

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

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

19 **SEC. 8. REGULATIONS.**

20       The Board of Governors of the Federal Reserve Sys-  
21 tem shall publish regulations implementing this Act, and  
22 the amendments made by this Act, in final form before  
23 the end of the 6-month period beginning on the date of  
24 the enactment of this Act.

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