

107TH CONGRESS
1ST SESSION

H. R. 3607

To amend the Truth in Lending Act to strengthen consumer protections and prevent predatory loan practices, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 20, 2001

Ms. WATERS introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Truth in Lending Act to strengthen consumer protections and prevent predatory loan 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 “Protecting Our Com-
5 munities From Predatory Lending Practices Act”.

6 **SEC. 2. UNFAIR OR DECEPTIVE ACTS OR PRACTICES PRO-**
7 **HIBITED.**

8 (a) IN GENERAL.—Chapter 1 of the Truth in Lend-
9 ing Act (15 U.S.C. 1601 et seq.) is amended by inserting
10 after section 114 the following new section:

1 **“§ 115. Unfair or deceptive acts or practices and**
2 **false, deceptive, or misleading statements**
3 **or representations prohibited**

4 “(a) IN GENERAL.—No person may—

5 “(1) engage, directly or indirectly, in any unfair
6 or deceptive act or practice in connection with any
7 consumer credit transaction, the business of extend-
8 ing or servicing any consumer credit, or any adver-
9 tisement relating to any such transaction or busi-
10 ness’ or

11 “(2) make or cause to be made, directly or indi-
12 rectly, any false, deceptive, or misleading statement
13 or representation in connection with any consumer
14 credit transaction, any application, solicitation, or
15 advertisement for any consumer credit transaction,
16 or any real or personal property securing any such
17 transaction.

18 “(b) RULE OF CONSTRUCTION.—Subsection (a) shall
19 not be construed as creating any implication with regard
20 to whether any person referred to in such subsection is
21 or is not also subject to section 5 of the Federal Trade
22 Commission Act.”

23 (b) TECHNICAL AND CONFORMING AMENDMENT.—
24 Section 108(a) of the Truth in Lending Act (15 U.S.C.
25 1607(a)) is amended, in that portion of subsection that

1 precedes paragraph (1), by inserting “, other than section
2 115,” after “requirements imposed under this title”.

3 (c) CLERICAL AMENDMENT.—The table of sections
4 for chapter 1 of the Truth in Lending Act is amended
5 by inserting after the item relating to section 114 the fol-
6 lowing new item:

“115. Unfair or deceptive acts or practices prohibited.”.

7 **SEC. 3. SAFEGUARDS FOR CONSUMER CREDIT TRANS-**
8 **ACTIONS SECURED BY DWELLINGS.**

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

12 **“§ 129A. General provisions applicable to consumer**
13 **credit secured by the consumer’s dwell-**
14 **ing**

15 “(a) PREPAYMENT PENALTIES PROHIBITED.—A
16 consumer credit transaction which is secured by the con-
17 sumer’s dwelling may not be subject to terms under which
18 a consumer must pay a prepayment penalty for paying all
19 or part of the principal before any date on which any pay-
20 ment of principal is due.

21 “(b) FINANCING OF CREDIT INSURANCE PROHIB-
22 ITED.—

23 “(1) IN GENERAL.—No creditor may, directly
24 or indirectly—

1 “(A) finance any credit life, credit dis-
2 ability, or credit unemployment insurance, or
3 any other life or health insurance premiums in
4 a consumer credit transaction secured by the
5 consumer’s dwelling; or

6 “(B) require or allow the advance collec-
7 tion of a fee for any debt cancellation or sus-
8 pension agreement or contract in connection
9 with any such mortgage,

10 whether such premium or fee is paid directly by the
11 consumer or is financed by the consumer through
12 such mortgage.

13 “(2) RULE OF CONSTRUCTION.—Paragraph (1)
14 shall not be construed as affecting the right of a
15 creditor to require the collection of insurance pre-
16 mium payments into an escrow account in conjunc-
17 tion with the servicing of an extension of credit.

18 “(c) FLIPPING OF CONSUMER LOANS PROHIB-
19 ITED.—

20 “(1) IN GENERAL.—No creditor may knowingly
21 or intentionally engage in the practice of flipping a
22 consumer loan or other extension of credit secured
23 by a consumer’s dwelling.

24 “(2) FLIPPING DEFINED.—For purposes of
25 paragraph (1), the term ‘flipping’ means the act of

1 making of a new loan or other extension of credit to
2 a borrower to refinance an existing consumer loan or
3 other extension of credit when the new loan or ex-
4 tension of credit does not have a reasonable, tangible
5 net benefit to the borrower considering all of the cir-
6 cumstances, including the terms of both the new and
7 refinanced loans or extensions of credit, the cost of
8 the new loan or extension of credit, and the bor-
9 rower’s circumstances.

10 “(d) FEES PROHIBITED FOR SERVICES OR PROD-
11 UCTS NOT ACTUALLY PROVIDED.—A creditor may not,
12 in connection with a consumer credit transaction secured
13 by the consumer’s dwelling—

14 “(1) impose, directly or indirectly, a fee or
15 charge for a product or service that is not actually
16 provided to or for the direct benefit of the consumer;
17 and

18 “(2) misrepresent the amount charged by or
19 paid to a third party for a product or service.

20 “(e) DIRECT PAYMENTS TO HOME IMPROVEMENT
21 CONTRACTORS WITHOUT CONSUMER COUNTER-
22 SIGNATURE PROHIBITED.—A creditor shall not make a
23 payment to a contractor under a home improvement con-
24 tract from the proceeds of a consumer credit transaction
25 secured by the consumer’s dwelling, other than—

1 (1) in the form of an instrument that is payable
2 either to the consumer or jointly to the consumer
3 and the contractor; or

4 (2) at the election of the consumer, by a third
5 party escrow agent in accordance with terms estab-
6 lished in a written agreement signed by the con-
7 sumer, the creditor, and the contractor before the
8 date of payment.

9 “(f) CREDITOR ATTEMPT TO INFLUENCE APPRAISER
10 PROHIBITED.—A creditor may not influence, or attempt
11 to influence, directly or indirectly, the independent judg-
12 ment of an appraiser in connection with an appraisal or
13 a consumer’s dwelling which is or will secure a loan or
14 other extension of credit by such creditor.

15 “(g) DISCLOSURE OF CONSUMER’S CREDIT SCORE
16 REQUIRED.—If a creditor obtains or calculates a credit
17 score of any consumer in connection with any consumer
18 credit transaction, or any application or solicitation for
19 any consumer credit transaction, which is or is to be se-
20 cured by the consumer’s dwelling (without regard to
21 whether the transaction is consummated), the creditor
22 shall disclose, in writing—

23 “(1) such credit score to the consumer; and

24 “(2) the methodology used for the evaluation of
25 the credit score, including the statistical basis for

1 the calculation of the consumer's credit score from
2 the credit history of the consumer.

3 “(h) BLANK TERMS IN CREDIT AGREEMENTS PRO-
4 HIBITED.—Any contract for the extension of consumer
5 credit secured by the consumer's dwelling which, at the
6 time the consumer signs or otherwise acknowledges the
7 contract, does not contain all the written terms of the con-
8 tract, or has blank spaces for such terms to be filled in
9 after the contract is entered into, shall be null and void.

10 “(i) ARBITRATION.—

11 “(1) IN GENERAL.—Any contract for the exten-
12 sion of consumer credit secured by the consumer's
13 dwelling may not include terms which require arbi-
14 tration or any other nonjudicial procedure as the
15 method for resolving any controversy or settling any
16 claims arising out of the transaction.

17 “(2) POST-CONTROVERSY AGREEMENTS.—Para-
18 graph (1) shall not be construed as limiting the
19 right of the consumer and the creditor to agree to
20 arbitration or any other nonjudicial procedure as the
21 method for resolving any controversy at any time
22 after a dispute or claim under the transaction arises.

23 “(j) PROHIBITION ON STEERING CONSUMERS WHO
24 QUALIFY FOR CONVENTIONAL MORTGAGES TO HIGH
25 COST MORTGAGES.—No creditor or mortgage broker may

1 direct a consumer to a mortgage loan product the terms
2 of which are less favorable than the terms for which the
3 consumer is qualified on the basis of current underwriting
4 guidelines.

5 “(k) CONSISTENT STANDARDS FOR LATE FEES.—
6 Before the end of the 120-day period beginning on the
7 date of the enactment of the Protecting Our Communities
8 From Predatory Lending Practices Act, the Board shall
9 prescribe regulations in final form to be effective within
10 60 days of such publication that establish the following
11 requirements with regard to any late fee or charge that
12 may be imposed for the failure of the consumer to make
13 any payment due with respect to a consumer credit trans-
14 action secured by the consumer’s dwelling on or before the
15 due date for such payment:

16 “(1) No creditor may impose any such late fee
17 or charge—

18 “(A) in an amount in excess of the amount
19 equal to 4 percent of the amount of payment
20 past due;

21 “(B) for any payment unless the payment
22 past due for 15 days or more;

23 “(C) more than once with respect to a sin-
24 gle late payment;

1 “(D) unless the creditor notifies the con-
2 sumer before the earlier of—

3 “(i) the end of the 45-day period be-
4 ginning on the date the payment was due;
5 or

6 “(ii) immediately upon assessing the
7 late payment charge,
8 that a late fee or charge has been imposed in
9 connection with a particular late payment which
10 must be paid unless the borrower can show that
11 the payment was paid in full and on time:

12 “(E) if the consumer informs the creditor
13 that nonpayment of an amount is in dispute
14 and presents proof of payment within 45 days
15 of receipt of the creditor’s notice pursuant to
16 subparagraph (D) of the late fee or charge; and

17 “(F) unless the creditor treats each and
18 every payment as posted on the same date as
19 it was received by the creditor, servicer, lender’s
20 agent or at the address provided to the con-
21 sumer by the creditor, servicer, or servicer’s
22 agent for making payments;

23 “(2) If a late fee or charge subject to this sub-
24 section is deducted from a payment due with respect
25 to an outstanding balance under such consumer

1 credit transaction and such deduction results in a
2 subsequent default on a subsequent payment, no late
3 fee or charge may be imposed with regard to such
4 default;

5 “(3) If a late fee or charge has been once im-
6 posed with respect to a particular late payment by
7 the consumer, no such charge shall be imposed with
8 respect to any future payment which would have
9 been timely and sufficient but for the previous de-
10 fault, except that, if—

11 “(A) the consumer fails to make a subse-
12 quent installment payment;

13 “(B) the terms of the consumer credit
14 transaction provide that subsequent payments
15 shall first be applied to the past due balance;
16 and

17 “(C) the consumer resumes making install-
18 ment payments but has not paid all past due
19 installments,

20 the creditor may enforce the contract according to
21 its terms, imposing a separate late payment fee or
22 charge for each installment payment that becomes
23 due until the default is cured.

24 “(4) Late fees or charges described in para-
25 graph (1) shall be imposed in accordance with con-

1 sistent standards established by the Board in such
2 regulations.

3 “(5) In consultation with the Postmaster Gen-
4 eral, the Board shall require suspension of late fees
5 or charges described in paragraph (1) for payments
6 made by mail on such terms as the Board may pre-
7 scribe by regulation or order in the event of interrup-
8 tion in or suspension of mail distribution.”.

9 (b) **INCREASE IN MAXIMUM PENALTY AMOUNT.—**
10 Section 130(a)(2)(A)(i) of the Truth in Lending Act (15
11 U.S.C. 1640(a)(2)(A)(i)) is amended by striking “\$2,000”
12 and inserting “\$10,000”.

13 (c) **TECHNICAL AND CONFORMING AMENDMENT.—**
14 Subsection (i) of section 129 of the Truth in Lending Act
15 (15 U.S.C. 1639(i)) is amended to read as follows:

16 “(i) [Repealed]”.

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

 “129A. General provisions applicable to consumer credit secured by the con-
 sumer’s dwelling.”.

21 **SEC. 4. SAFEGUARDS FOR HIGH-COST MORTGAGES.**

22 (a) **APPLYING HIGH-COST LOAN PROTECTIONS TO**
23 **HOME PURCHASE LOANS AND LOWERING THE THRESH-**
24 **OLD FOR HIGH-COST LOANS.—**Section 103(aa) of the

1 Truth in Lending Act (15 U.S.C. 1602(aa)(1)) is amended
2 by striking all that precedes paragraph (2) and inserting
3 the following:

4 “(aa) HIGH-COST MORTGAGE DEFINED.—

5 “(1) IN GENERAL.—The term ‘high-cost mort-
6 gage’, and a mortgage referred to in this subsection,
7 means a consumer credit transaction that is secured
8 by the consumer’s principal dwelling, if any of the
9 following apply with respect to such consumer credit
10 transaction:

11 “(A) The annual percentage rate at con-
12 summation of the transaction exceeds by 4 or
13 more percentage points the yield on United
14 States Treasury securities having comparable
15 periods of maturity (as made available by the
16 Board) as of the week immediately preceding
17 the week in which the interest rate for the loan
18 is established.

19 “(B) The mortgage is a variable-rate loan
20 in which the annual percentage rate can reason-
21 ably be expected to increase beyond the thresh-
22 old established in subparagraph (A).

23 “(C) Potential or scheduled increases in
24 the annual percentage rate of the home loan are
25 controlled by the creditor and not directly tied

1 to changes in a publicly available rate not con-
2 trolled by the creditor.

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

6 (b) DEFINITION OF “POINTS AND FEES”.—Para-
7 graph (4) of section 103(aa) of the Truth in Lending Act
8 (15 U.S.C. 1602(AA)) is amended to read as follows:

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

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

13 “(i) all items included in the finance
14 charge, except interest or the time-price
15 differential;

16 “(ii) all compensation paid directly or
17 indirectly to a mortgage broker, including
18 a broker that originates a loan in its own
19 name in a table-funded transaction;

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

23 “(iv) the cost of all premiums fi-
24 nanced by the lender, directly or indirectly,
25 for any credit life, credit disability, credit

1 unemployment or credit property insur-
2 ance, or any other life or health insurance,
3 or any payments financed by the lender,
4 directly or indirectly, for any debt cancella-
5 tion or suspension agreement or contract,
6 except that, for purposes of this subpara-
7 graph, insurance premiums or debt can-
8 cellation or suspension fees calculated and
9 paid on a monthly basis shall not be con-
10 sidered financed by the lender;

11 “(v) any prepayment penalty (as de-
12 fined in section 129(c)(5)) or other fee
13 paid by the consumer in connection with
14 an existing loan which is being refinanced
15 with the proceeds of the consumer credit
16 transaction; and

17 “(vi) such other charges as the Board
18 determines to be appropriate.

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

22 “(i) Taxes, filing fees, recording and
23 other charges and fees paid or to be paid
24 to public officials for determining the exist-

1 ence of or for perfecting, releasing, or sat-
2 isfying a security interest.

3 “(ii) Fees paid to a person other than
4 a creditor or an affiliate of the creditor or
5 to the mortgage broker or an affiliate of
6 the mortgage broker for any of the fol-
7 lowing:

8 “(I) Fees for flood certification.

9 “(II) Fees for pest infestation
10 and flood determinations.

11 “(III) Surveys.

12 “(IV) Attorneys’ fees (if the bor-
13 rower has the right to select the attor-
14 ney from an approved list or other-
15 wise).

16 “(V) Escrow charges, so long as
17 not otherwise included under subpara-
18 graph (A).

19 “(VI) Fire insurance and flood
20 insurance premiums, to the extent
21 that the conditions in section
22 226.4(d)(2) of title 12 of the Code of
23 Federal Regulations, as in effect on
24 the date of the enactment of the Anti-

1 Predatory Lending Act of 2001, are
2 met.”.

3 (d) PROHIBITION ON ACTIONS ENCOURAGING DE-
4 FAULT.—Section 129(i) of the Truth in Lending Act (15
5 U.S.C. 1639) (as amended by section 3(c)) is amended
6 to read as follows:

7 “(i) PROHIBITION ON ACTIONS ENCOURAGING DE-
8 FAULT.—No creditor may make any statement, take any
9 action, or fail to take any action before or in connection
10 with the formation or consummation of any high-cost
11 mortgage to refinance all or any portion of an existing
12 loan or other extension of credit, if the statement, action,
13 or failure to act has the effect of encouraging or recom-
14 mending the consumer to default on the existing loan or
15 other extension of credit at any time before, or in connec-
16 tion with, the closing or any scheduled closing on such
17 high-cost mortgage.”.

18 (e) ADDITIONAL SAFEGUARDS FOR CONSUMERS OF
19 HIGH-COST MORTGAGES.—Section 129 of the Truth in
20 Lending Act (15 U.S.C. 1639) is amended—

21 (1) by redesignating subsections (k) and (l) as
22 subsections (o) and (p), respectively; and

23 (2) by inserting after subsection (j), the fol-
24 lowing new subsection:

1 “(k) FEES FOR OBTAINING PAY-OFF BALANCES
2 PROHIBITED.—A creditor may not impose any fee or
3 charge for providing to a consumer the pay-off balance
4 amount on any high-cost mortgage of such consumer.

5 “(l) NO LENDING WITHOUT HOME-OWNERSHIP
6 COUNSELING.—A creditor shall not enter into a high-cost
7 mortgage without having received certification from a
8 housing counseling agency (which is certified by the De-
9 partment of Housing and Urban Development) that the
10 borrower has received counseling on the advisability of the
11 loan transaction and the appropriateness of the loan for
12 the borrower.

13 “(m) PROHIBITION ON EXTENDING CREDIT WITH-
14 OUT REGARD TO PAYMENT ABILITY OF CONSUMER.—

15 “(1) IN GENERAL.—No creditor may make a
16 high-cost mortgage, unless the creditor reasonably
17 believes at the time the loan is consummated that 1
18 or more of the borrowers, when considered individ-
19 ually or collectively, will be able to make the sched-
20 uled payments to repay the obligation based upon a
21 consideration of their current and expected income,
22 current obligations, employment status, and other fi-
23 nancial resources (other than the borrower’s equity
24 in the dwelling which secures repayment of the
25 loan).

1 “(2) BORROWER DEFINED.—For purposes of
2 paragraph (1), the term ‘borrower’ means each bor-
3 rower, coborrower, obligor, cosigner, or guarantor
4 obligated to repay a loan.

5 “(n) MODIFICATION OR DEFERRAL FEES.—

6 “(1) IN GENERAL.—Except as provided in para-
7 graph (2), a creditor may not charge any consumer
8 with respect to a mortgage referred to in section
9 103(aa) any fee or other charge—

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

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

15 “(2) EXCEPTION FOR MODIFICATIONS FOR THE
16 BENEFIT OF THE CONSUMER.—Paragraph (1) shall
17 not apply with respect to any fee imposed in connec-
18 tion with any action described in subparagraph (A)
19 or (B) if the action (taking into account the amount
20 of such fee) provides a material benefit to the con-
21 sumer.”.

○