

106TH CONGRESS  
2D SESSION

# H. R. 3901

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

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2000

Ms. SCHAKOWSKY introduced the following bill; which was referred to the Committee on Banking and Financial Services

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## A BILL

To amend the Truth in Lending Act, the Revised Statutes of the United States, the Home Mortgage Disclosure Act of 1975, 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 “Anti-Predatory Lend-  
5 ing Act of 2000”.

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

7 (a) **STATUTORY REPORTING REQUIREMENTS.**—

1           (1) IN GENERAL.—Section 304(b) of the Home  
2 Mortgage Disclosure Act of 1977 (12 U.S.C.  
3 2803(b)) is amended—

4           (A) in paragraph (3), by striking “and”  
5 after the semicolon;

6           (B) in paragraph (4), by striking the pe-  
7 riod at the end and inserting “; and”; and

8           (C) by inserting after paragraph (4) the  
9 following new paragraph:

10           “(5) the annual percentage rate of mortgage  
11 loans and home improvement loans originated by the  
12 institution grouped according to census tract, income  
13 level, racial characteristics, and gender.”.

14           (2) CONFORMING AMENDMENTS.—The Home  
15 Mortgage Disclosure Act of 1977 (12 U.S.C. 2801  
16 et seq.) is amended—

17           (A) in section 304(i), by striking “sub-  
18 section (b)(4)” and inserting “paragraphs (4)  
19 and (5) of subsection (b)”.

20           (B) in section 308, by striking “subsection  
21 (b)(4)” and inserting “paragraphs (4) and (5)  
22 of subsection (b)”.

23           (b) PROHIBITION ON REGULATORY EXEMPTIONS  
24 FROM REPORTING REQUIREMENTS.—Section 304 of the  
25 Home Mortgage Disclosure Act of 1977 (12 U.S.C. 2803)

1 is amended by adding at the end the following new sub-  
2 section:

3 “(n) PROHIBITION ON REGULATORY EXEMPTIONS  
4 FROM REPORTING REQUIREMENTS.—Subject to sub-  
5 section (i)—

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

10 “(2) any exemption from the requirements of  
11 this title provided in any regulation, such as the ex-  
12 emption provided in Appendix A to part 203 of the  
13 Code of Federal Regulations for lending institutions  
14 described in section 303(2)(B) whose total dollar  
15 amount of purchase loans originated in any year did  
16 not exceed 10 percent of the total dollar amount of  
17 all loan originations by such institution in such year,  
18 shall cease to be effective as of the date of the enact-  
19 ment of the Anti-Predatory Lending Act of 2000.”

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

21 (a) APPLYING HIGH-COST LOAN PROTECTIONS TO  
22 HOME PURCHASE LOANS AND LOWERING THE THRESH-  
23 OLD FOR HIGH-COST LOANS.—

24 (1) IN GENERAL.—Section 103(aa) of the  
25 Truth in Lending Act (15 U.S.C. 1602(aa)(1)) is

1 amended by striking all that precedes paragraph (2)  
2 and inserting the following:

3 “(aa) HIGH-COST MORTGAGE DEFINED.—

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

11 “(A) The annual percentage rate at con-  
12 summation exceeds by 5 or more percentage  
13 points the weekly average yield on United  
14 States Treasury securities adjusted to a con-  
15 stant maturity of 1 year (as made available by  
16 the Board) as of the week immediately pre-  
17 ceeding the week in which the interest rate for  
18 the loan 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) Subject to paragraph (5), the points  
4 and fees on the loan cannot be financed.”.

5 (2) TECHNICAL AMENDMENT RELATING TO  
6 POINTS AND FEES.—Section 103(aa) of the Truth in  
7 Lending Act (15 U.S.C. 1602(aa)) is amended—

8 (i) by redesignating paragraph (5) as  
9 paragraph (6); and

10 (ii) by inserting after paragraph (4),  
11 the following new paragraph:

12 “(5) RULE RELATING TO DISCOUNT POINTS.—  
13 For the purposes of paragraph (1)(D), the following  
14 discount points shall be excluded from the calcula-  
15 tion of the total points and fees:

16 “(A) Up to and including 2 bona fide loan  
17 discount points payable by the borrower in con-  
18 nection with the loan transaction, but only if  
19 the interest rate from which the loan’s interest  
20 rate will be discounted does not exceed by more  
21 than 1 percentage point the required net yield  
22 for a 90-day standard mandatory delivery com-  
23 mitment for a reasonably comparable loan from  
24 either the Federal National Mortgage Associa-

1           tion or the Federal Home Loan Mortgage Cor-  
2           poration, whichever is greater.

3           “(B) Up to and including 1 bona fide loan  
4           discount point payable by the borrower in con-  
5           nection with the loan transaction, but only if  
6           the interest rate from which the loan’s interest  
7           rate will be discounted does not exceed by more  
8           than 2 percentage points the required net yield  
9           for a 90-day standard mandatory delivery com-  
10          mitment for a reasonably comparable loan from  
11          either the Federal National Mortgage Associa-  
12          tion or the Federal Home Loan Mortgage Cor-  
13          poration, whichever is greater.”.

14          (b) MODIFICATION OF DEFINITION OF “POINTS AND  
15          FEES”.—Paragraph (4) of section 103(aa) of the Truth  
16          in Lending Act (15 U.S.C. 1602(aa)) is amended to read  
17          as follows:

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

19                         “(A) IN GENERAL.—For purposes of para-  
20                         graph (1)(D), the term ‘points and fees’ shall  
21                         include—

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

1                   “(ii) such other charges as the Board  
2                   determines to be appropriate.

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

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

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

16                         “(I) Fees for flood certification.

17                         “(II) Fees for pest infestation  
18                         and flood determinations.

19                         “(III) Appraisal fees.

20                         “(IV) Fees for inspections per-  
21                         formed prior to closing.

22                         “(V) Credit reports.

23                         “(VI) Surveys.

24                         “(VII) Attorneys’ fees (if the bor-  
25                         rower has the right to select the attor-

1                   ney from an approved list or other-  
2                   wise).

3                   “(VIII) Notary fees.

4                   “(IX) Escrow charges, so long as  
5                   not otherwise included under subpara-  
6                   graph (A).

7                   “(X) Title insurance premiums.

8                   “(XI) Fire insurance and flood  
9                   insurance premiums, to the extent  
10                  that the conditions in section  
11                  226.4(d)(2) of title 12 of the Code of  
12                  Federal Regulations, as in effect on  
13                  the date of the enactment of the Anti-  
14                  Predatory Lending Act of 2000, are  
15                  met.”.

16               (c) COVERAGE OF MORTGAGE BROKERS.—The last  
17               sentence of section 103(f) of the Truth in Lending Act  
18               (15 U.S.C. 1602(f)) is amended—

19                   (1) by striking “or any person who” and insert-  
20                   ing a comma;

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

1 (d) PROHIBITED PRACTICES FOR HIGH-COST HOME  
2 LOANS.—Section 129 of the Home Ownership and Equity  
3 Protection Act of 1994 (15 U.S.C. 1639) is amended—

4 (1) in subsection (e), by striking “of less than  
5 five years”;

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

7 (3) by redesignating subsections (d), (e), (g),  
8 and (i) as subsections (c), (d), (e), and (f), respec-  
9 tively; and

10 (4) by inserting after subsection (f) (as so re-  
11 designated by paragraph (3) of this subsection) the  
12 following new subsections:

13 “(g) NO CALL PROVISION.—

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

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

23 “(h) NO MODIFICATION OR DEFERRAL FEES.—A  
24 creditor shall not charge a borrower any fees or other  
25 charges to modify, renew, extend, or amend a high-cost

1 home mortgage or to defer any payment due under any  
2 such mortgage.

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

11 “(j) NO MANDATORY ARBITRATION CLAUSE.—A  
12 high-cost mortgage may not include terms under which a  
13 mandatory arbitration clause limits in any way the right  
14 of the borrower to seek relief through the judicial process.

15 “(k) ATTEMPTED EVASION OF COVERAGE.—The pro-  
16 visions of this section shall apply to any person who in  
17 bad faith attempts to avoid its application by—

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

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

1           “(3) by engaging in any other such subterfuge  
2           for the purpose of evading the provisions of this sec-  
3           tion.

4           “(1) CORRECTIONS AND UNINTENTIONAL VIOLA-  
5           TIONS.—

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

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

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

20                           “(ii) change the terms of the loan in  
21                           a manner beneficial to the borrower so that  
22                           the loan will no longer be considered a  
23                           high-cost mortgage subject to the provi-  
24                           sions of this section; or

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

13                   “(i) make the high-cost home loan  
14                   satisfy the requirements of section 129; or

15                   “(ii) change the terms of the loan in  
16                   a manner beneficial to the borrower so that  
17                   the loan will no longer be considered a  
18                   high-cost home loan subject to the provi-  
19                   sions of this section.

20           “(2) BONA FIDE ERROR.—For purposes of  
21           paragraph (1), examples of a bona fide error include  
22           clerical, calculation, computer malfunction and pro-  
23           gramming, and printing errors. An error of legal  
24           judgment with respect to a person’s obligations  
25           under this section is not a bona fide error.”.

1 **SEC. 4. REQUIREMENTS FOR ALL CONFORMING HOME**  
2 **LOANS.**

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

6 **“SEC. 129A. REQUIREMENTS FOR ALL CONFORMING HOME**  
7 **LOANS.**

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

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

17 “(2) the borrower is an individual or are indi-  
18 viduals;

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

22 “(4) the loan is secured by a mortgage or deed  
23 of trust on real estate upon which there is located  
24 or there is to be located a structure or structures de-  
25 signed principally for occupancy of from 1 to 4 fami-

1 lies which is or will be occupied by the borrower as  
2 the borrower's principal dwelling.

3 “(b) NO PREPAYMENT PENALTY.—

4 “(1) LIMITATION ON TERMS.—A conforming  
5 home loan may not contain terms under which a  
6 consumer must pay a prepayment penalty for paying  
7 all or part of the principal before the date on which  
8 the 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 “(c) NO NEGATIVE AMORTIZATION.—A conforming  
17 home loan 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 “(d) PROHIBITION ON EXTENDING CREDIT WITH-  
22 OUT REGARD TO PAYMENT ABILITY OF CUSTOMER.—

23 “(1) IN GENERAL.—No creditor may make a  
24 conforming home loan, unless the creditor reason-  
25 ably believes at the time the loan is consummated

1 that 1 or more of the obligors, when considered indi-  
2 vidually or collectively, will be able to make the  
3 scheduled payments to repay the obligation based  
4 upon a consideration of their current and expected  
5 income, current obligations, employment status, and  
6 other financial resources (other than the borrower's  
7 equity in the dwelling which secures repayment of  
8 the 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 “(e) 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 conforming home loan.

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

1       “(f) 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 conforming home loan that re-  
5 finances all or any portion of such existing loan or debt.

6       “(g) NO PAYMENTS TO APPRAISERS.—No creditor  
7 may compensate, directly or indirectly, coerce, or intimi-  
8 date an appraiser for the purpose of influencing the inde-  
9 pendent judgment of the appraiser with respect to the  
10 value of real estate that is to be covered by a conforming  
11 home loan or is being offered as security according to an  
12 application for a conforming home loan.

13       “(h) NO FINANCING OF CREDIT INSURANCE.—

14               “(1) IN GENERAL.—No creditor may finance,  
15 directly or indirectly, any credit life, credit disability,  
16 or credit unemployment insurance, or any other life  
17 or health insurance premiums through a conforming  
18 home loan.

19               “(2) RULE OF CONSTRUCTION.—Paragraph (1)  
20 shall not be construed as affecting the right of a  
21 creditor to require the collection of insurance pre-  
22 mium payments into an escrow account in conjunc-  
23 tion with the servicing of a conforming home loan to  
24 the extent the calculation and servicing of such in-

1       surance premiums are conducted and reported inde-  
2       pendently of the conforming home loan.

3       “(i) NO BLANK ITEMS.—A conforming home loan  
4 document in which blanks are left to be filled in after the  
5 contract is signed shall not be enforceable under Federal  
6 law or the law of any State.

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

15       “(k) ALTERNATIVE MAXIMUM PENALTY.—Notwith-  
16 standing any maximum amount limitation contained in  
17 section 130, in the case of any creditor who fails to comply  
18 with section 129, in connection with any high-cost mort-  
19 gage, or this section, in connection with any conforming  
20 home loan, the liability of the creditor under section 130  
21 to the consumer for such violation shall not exceed the  
22 greater of—

23               “(1) the amount determined under section 130;  
24       or

1           “(2) the amount of the principal and the total  
2 amount of the finance charge on such mortgage or  
3 loan.

4           “(1) NONCOMPLIANT LOANS PROHIBITED FROM  
5 MORTGAGE-BACKED SECURITY POOLS.—

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

16           “(2) INCLUSION IN POOLS.—No creditor or  
17 other person may knowingly include any high-cost  
18 mortgage or conforming home loan that violates any  
19 provision of this section or section 129 in any pool  
20 described in paragraph (1).”.

21           (b) CLERICAL AMENDMENT.—The table of sections  
22 for chapter 2 of the Truth in Lending Act (15 U.S.C.  
23 1601 et seq.) is amended by inserting after the item relat-  
24 ing to section 129 the following new item:

“129A. Requirements for all conforming home loans.

1 **SEC. 5. EFFECTIVE DATE.**

2 (a) IN GENERAL.—Except as provided in subsection  
3 (b), this Act and the amendments made by this Act shall  
4 take effect at the end of the 90-day period beginning on  
5 the date of the enactment of this Act.

6 (b) HMDA REQUIREMENTS.—Notwithstanding sub-  
7 section (a), the amendments made by section 2 shall take  
8 effect on January 1 of the 1st calendar year beginning  
9 after the date of the enactment of this Act.

○