

Summary of The “Predatory Lending Consumer Protection Act of 2000”

Definition of “High Cost” Mortgage: the legislation tightens the definition of a “high cost mortgage,” for which certain consumer protections are triggered. The new definition, which amends the “Home Ownership Equity Protection Act,” is as follows:

- first mortgages that exceed Treasury securities by six (6) percentage points;
 - second mortgages that exceed Treasury securities by eight (8) percentage points;
- or
- mortgages where total points and fees payable by the borrower exceed the greater of five percent (5%) of the total loan amount, or \$1,000. The bill revises the definition of points and fees to be more inclusive.

The following key protections are triggered for high cost mortgages only:

- Restrictions on financing of points and fees. The bill restricts a creditor from directly or indirectly financing any portion of the points, fees or other charges greater than 3% of the total sum of the loan, or \$600. The lender cannot finance prepayment penalties or points paid by the consumer if the originator of the loan is refinancing the loan. Moreover, the lender or any affiliated creditor cannot finance points and fees for the refinancing of a loan they originated.
- Limitation on the payment of prepayment penalties. The bill prohibits the lender from imposing prepayment penalties after the initial 24 month period of the loan. During the first 24 months of a loan, prepayment penalties are limited to the difference in the amount of closing costs and fees financed and 3% of the total loan amount.
- Prohibition on balloon payments. The bill prohibits the use of balloon payments.
- Limitation on single premium credit insurance. The bill would prohibit the upfront payment or financing of credit life, credit disability or credit unemployment insurance on a single premium basis. However, borrowers are free to purchase such insurance with the regular mortgage payment on a periodic basis, provided that it is a separate transaction that can be canceled at any time.
- Extension of liability for home improvement contract loans. The bill would make parent companies and officers of lenders, or subsequent holders of loans by a contractor, liable for HOEPA violations if the contractor goes out of business to avoid liability.
- Limitation on mandatory arbitration clauses. The bill prohibits mortgages from including terms which require arbitration or other non-judicial settlement as the sole method of settling claims or disputes arising under the loan agreement.

- Prohibition on requiring rescission of rights. The bill prohibits a creditor from requiring or encouraging a borrower to sign an election not to exercise the three-day right to rescind or cancel a credit transaction at the same time that the borrower receives notice of the right of rescission.

Other provisions in the bill:

- Increase statutory damages in individual civil actions and class actions. The maximum amount that can be awarded in individual actions is increased to \$100,000. The maximum amount that can be awarded in a class action is the greater of: (i) the maximum amount of the liability available for an individual action multiplied by the number of members or (ii) 2 percent of the net worth of the creditor.
- Require that as a condition for making a high cost loan, a creditor make a determination at the time the loan is consummated, that the borrower will be able to make the scheduled payments to repay the loan obligation.
- Prohibit a lender from making a high cost loan unless it certifies that it has provided the borrower with certain information regarding the risks associated with high cost loans and the availability of home ownership counseling.
- Require additional disclosures related to the risks associated with high cost mortgages.
- Prohibit a creditor/lender from: (i) recommending or encouraging default on an existing loan or other debt prior to, or in connection with, a closing on a high cost loan, (ii) including any provision which permits the creditor, in its sole discretion, to accelerate the indebtedness under the loan, or (iii) charging a borrower any fee to modify a high-cost loan or defer payment due under such high cost loan unless it provides a material benefit to the borrower.
- Require that a creditor annually report both favorable and unfavorable payment history of borrowers to credit bureaus.