

## **LaFalce-Sarbanes “Predatory Lending Consumer Protection Act of 2000”**

This legislation is designed to strengthen current laws by closing gaps in the Truth-in-Lending Act (“TILA”) and the Home Owners Equity Protection Act (“HOEPA”).

### **The Problem: Classic Predatory Lending**

Predatory lenders target vulnerable, often elderly, people with a lot of equity in their homes. They underwrite the property instead of establishing the borrower’s ability to pay the loan back. The brokers/lenders make their money by charging extremely high origination fees, and by “packing” other products into the loan, including upfront premiums for credit life insurance, or credit unemployment insurance, for which they get significant commissions. The financing of these fees greatly increases the balance of a loan and results in the borrower getting into financial trouble. When the borrower subsequently experiences trouble, the predatory lender will often offer to refinance the loan. However, these loans are also characterized by excessive prepayment penalties that make it difficult for the borrower to accelerate payment of a loan or refinance with another lender. So, by the time the refinancing occurs, with all the fees repeated and the prepayment penalty included, the lender/broker makes a lot of money from the transaction, and the owner has been stripped of his or her equity.

### **The Key Provisions in the LaFalce-Sarbanes Bill**

Current law (HOEPA) contains some protections for borrowers and homeowners. However, the law has been criticized because it contains many exceptions and the thresholds where the protections kick in are too high. Moreover, lenders often structure many high cost loans in order to avoid compliance with HOEPA’s requirements.

In an effort to expand the protections under the law, the bill creates a new, more expansive, definition of high cost mortgage whereby a more comprehensive set of protections are triggered. In short, the bill expands HOEPA to cover open-end credit transactions secured by the principal residence (home-equity lines of credit) and revises the definition of a high cost mortgage.

Once a loan meets the high cost threshold, several key protections are triggered. They include restrictions on financing of points and fees, prohibitions on up-front payment or financing of single premium credit insurance, limitations on prepayment penalties, and prohibitions on balloon payments. These provisions are designed to discourage predatory practices by limiting the amount of equity that can be stripped from borrowers through unnecessary and/or excessive fees.

In addition, the bill seeks to enhance enforcement of HOEPA and TILA by increasing civil remedies, expanding the right of rescission and curbing the use of mandatory arbitration to avoid liability for violations. The bill also requires additional disclosure of

information regarding the risks associated with high cost loans and the availability of home ownership counseling.