

107TH CONGRESS
2^D SESSION

H. R. 3807

To protect home buyers from predatory lending practices.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 27, 2002

Mrs. JONES of Ohio introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To protect home buyers from predatory lending practices.

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 Mortgage
5 Lending Practices Reduction Act”.

6 **SEC. 2. CERTIFICATION REQUIREMENTS FOR MORTGAGE**
7 **LENDERS AND BROKERS.**

8 (a) IN GENERAL.—The Real Estate Settlement Pro-
9 cedures Act of 1974 is amended by inserting after section
10 12 (12 U.S.C. 2610) the following new section:

1 **“SEC. 13. CERTIFICATION REQUIREMENTS FOR MORTGAGE**
2 **LENDERS AND BROKERS.**

3 “(a) REQUIREMENT.—No individual may, in connec-
4 tion with a subprime federally mortgage related loan, pro-
5 vide mortgage lending services or mortgage brokerage
6 services unless such person is, at the time of the provision
7 of such services, certified by the Secretary pursuant to this
8 section as having been adequately trained with regard to
9 subprime lending.

10 “(b) STANDARDS AND EXAMINATION.—

11 “(1) IN GENERAL.—The Secretary shall, by
12 regulation, establish requirements, standards, and
13 procedures for testing and certifying persons pro-
14 viding mortgage lending services or mortgage bro-
15 kerage services in connection with a subprime, feder-
16 ally related mortgage loans.

17 “(2) EXAMINATION.—Such standards and pro-
18 cedures shall require, for certification under this sec-
19 tion, that the individual shall demonstrate, by writ-
20 ten examination, knowledge regarding the following
21 areas:

22 “(A) FEDERAL LAW.—The requirements
23 and limitations under Federal laws regarding
24 mortgage lending, including the Truth in Lend-
25 ing Act, the Fair Credit Reporting Act, the
26 Equal Credit Opportunity Act, the Real Estate

1 Settlement Procedures Act of 1974, the Home
2 Ownership and Equity Protection Act of 1994,
3 the Home Mortgage Disclosure Act of 1975,
4 and the Fair Housing Act.

5 “(B) SUBPRIME LENDING.—Legal and ap-
6 propriate practices, methods, conventions, and
7 terms of subprime lending in all lending func-
8 tions, including advertising and marketing, con-
9 sumer education and counseling, origination,
10 underwriting, closing, servicing, information
11 technology, and internal control policies and
12 procedures.

13 “(C) PREDATORY LENDING.—Illegal and
14 inappropriate practices, methods, practices, and
15 terms of predatory lending.

16 “(D) LAW REGARDING COMPETENCY TO
17 CONTRACT.—Basic contract law regarding com-
18 petency and incapacity to contract.

19 “(c) DECERTIFICATION.—The Secretary shall estab-
20 lish standards and procedures for suspension and revoca-
21 tion of the certification under this section, which shall—

22 “(1) provide the individual subject to suspen-
23 sion or revocation an opportunity to be heard; and

24 “(2) provide for suspension or revocation in
25 such instances as the Secretary determines appro-

1 appropriate, which shall include an agency determination
2 or a judgment by a court of competent jurisdiction
3 that a certified individual has engaged in an act or
4 practice that is unfair or deceptive under section 5
5 of the Predatory Mortgage Lending Practices Re-
6 duction Act.

7 “(d) RENEWAL OF CERTIFICATION.—The Secretary
8 shall provide that certification under this section shall be
9 effective for a specified period of time, as determined by
10 the Secretary. The Secretary shall establish standards and
11 procedures for recertification of individuals whose certifi-
12 cations are expiring. The Secretary shall establish a proce-
13 dure for notifying certified individuals of the expiration
14 of their certifications.

15 “(e) INFORMATION AND TRAINING.—

16 “(1) IN GENERAL.—The Secretary shall make
17 available, for persons engaged in providing mortgage
18 lending services and mortgage brokerage services, in-
19 formation and training in the areas described in sub-
20 section (b)(2). Such information and training shall
21 be made available through classes, written materials,
22 and the World Wide Web.

23 “(2) CONTRACTS.—The Secretary may enter
24 into such agreements and contracts as the Secretary

1 considers necessary to make information and train-
2 ing under this paragraph available.

3 “(3) AUTHORIZATION OF APPROPRIATIONS.—

4 For providing information and training under this
5 paragraph, there are authorized to be appropriated
6 to the Secretary \$1,000,000 for each of fiscal years
7 2003 and 2004.

8 “(f) DEFINITIONS.—For purposes of this section, the
9 following definitions shall apply:

10 “(1) MORTGAGE BROKERAGE SERVICES.—The
11 term ‘mortgage brokerage services’ means the bring-
12 ing together of a borrower and lender to obtain a
13 federally related mortgage loan and the rendering of
14 settlement services, by an individual who is not an
15 employee or exclusive agent of a lender.

16 “(2) MORTGAGE LENDING SERVICES.—The
17 term ‘mortgage lending services’ means services re-
18 lating to the origination of a federally related mort-
19 gage loan, including the taking of loan applications,
20 loan processing, and the underwriting and funding
21 of a loan.

22 “(3) PRIME LENDING RATE.—The term ‘prime
23 lending rate’ means, in connection with a federally
24 related mortgage loan, an annual percentage rate
25 that does not exceed by more than 10 percentage

1 points the yield on Treasury securities having com-
2 parable periods of maturity on the fifteenth day of
3 the month immediately preceding the month in
4 which the loan is made.

5 “(4) SUBPRIME.—

6 “(A) IN GENERAL.—The term ‘subprime’
7 means, with respect to a federally related mort-
8 gage loan, that the borrower under the loan, or
9 the loan terms, exhibit characteristics that indi-
10 cate that the loan is subject to a significantly
11 higher risk of default than federally related
12 mortgage loans made to borrowers at prime
13 lending rates.

14 “(B) REGULATIONS.—The Secretary shall
15 prescribe regulations to carry out this para-
16 graph, which shall specify characteristics re-
17 ferred to in subparagraph (A) that indicate a
18 higher risk of default and shall establish cri-
19 teria based on such characteristics for deter-
20 mining whether a federally related mortgage
21 loan is a subprime loan. Such characteristics
22 may include—

23 “(i) higher loan fees or penalties;

24 “(ii) higher interest rates;

25 “(iii) higher debt-to-income ratios;

1 “(iv) a history of loan delinquency;
2 “(v) higher loan-to-value ratios;
3 “(vi) lower credit scores or other cred-
4 it ratings;
5 “(vii) more recent declaration of
6 bankruptcy;
7 “(viii) lack of a credit history; and
8 “(ix) any other factors that the Sec-
9 retary considers appropriate.”.

10 (b) REGULATIONS.—Not later than December 31,
11 2002, the Secretary of Housing and Urban Development
12 shall issue regulations pursuant to section 19(a) of the
13 Real Estate Settlement Procedures Act of 1974 (12
14 U.S.C. 2617(a)) as may be necessary to carry out the
15 amendment made by subsection (a) of this section.

16 **SEC. 3. LENDER REQUIREMENTS FOR HIGH COST MORT-**
17 **GAGES.**

18 Section 129 of the Truth in Lending Act (15 U.S.C.
19 1639) is amended by adding at the end the following new
20 subsections:

21 “(m) BEST PRACTICES PLAN.—

22 “(1) IN GENERAL.—Any creditor who extends
23 credit in connection with a mortgage referred to in
24 section 103(aa) shall establish and maintain a best
25 practices plan, in accordance with regulations which

1 the Board shall prescribe, to ensure compliance with
2 the requirements of this title.

3 “(2) REQUIREMENTS.—The best practices plan
4 established under paragraph (1) by any creditor
5 shall require the creditor, and any subcontractor or
6 agent of the creditor to—

7 “(A) provide all employees of the creditor,
8 subcontractor, or agent who are involved in any
9 aspect of an extension of credit in connection
10 with a mortgage referred to in section 103(aa),
11 and any subcontractor or agent of such creditor
12 so involved, with such training in the best prac-
13 tices plan of the creditor as the Board deter-
14 mines by regulation to be appropriate; and

15 “(B) periodically review and evaluate the
16 performance of such employees, contractors,
17 and agents under the best practices plan.

18 “(n) GOOD FAITH RESOLUTION OF COMPLAINTS.—
19 A creditor, and any agent or assignee of the creditor, shall
20 make a good faith effort to resolve any consumer com-
21 plaint concerning improper or questionable lending prac-
22 tices with respect to a mortgage referred to in section
23 103(aa) before the end of the 60-day period beginning on
24 the date the complaint is received by the creditor, agent
25 or assignee.

1 “(o) PROHIBITION ON CHARGES NOT PREVIOUSLY
2 DISCLOSED.—A creditor, or an agent or assignee of a
3 creditor, may not impose any charge or fee, or attempt
4 to collect any charge or fee, in connection with a mortgage
5 referred to in section 103(aa) that was not disclosed be-
6 fore the mortgage was executed, or impose or attempt to
7 collect any charge or fee that was so disclosed in an
8 amount in excess of the amount disclosed, unless the cred-
9 itor or assignee establishes, in accordance with regulations
10 which the Board shall prescribe, that the charge or fee
11 is reasonable and could not have reasonably been foreseen
12 at the time the mortgage was executed.

13 “(p) PLAIN DESCRIPTION AND DISCLOSURE RE-
14 QUIREMENT.—

15 “(1) CHARGES AND FEES.—Notwithstanding
16 any other provision of this title, all disclosures of
17 charges and fees required under this title with re-
18 gard to a mortgage referred to in section 103(aa),
19 shall be separately enumerated and clearly labeled,
20 stated, and described, including charges described in
21 clause (ii) or (iii) of section 128(a)(2)(A).

22 “(2) RESCISSION AND OTHER RIGHTS.—The
23 disclosure required under the penultimate sentence
24 of section 125(a) in connection with a mortgage re-
25 ferred to in section 103(aa), together with a sum-

1 mary of the consumer’s rights, shall be provided to
2 the consumer in clear and plain language before the
3 mortgage is executed.”.

4 **SEC. 4. UNFAIR AND DECEPTIVE ACTS AND PRACTICES.**

5 (a) PROHIBITION.—It shall be unlawful, in providing
6 any mortgage lending services for a subprime federally re-
7 lated mortgage loan or any mortgage brokerage services
8 for such a loan, to engage in any unfair or deceptive act
9 or practice.

10 (b) RULEMAKING PROCEEDINGS.—The Secretary of
11 Housing and Urban Development, the Board of Governors
12 of the Federal Reserve System, and the Federal Trade
13 Commission may jointly issue—

14 (1) interpretive rules and general statements of
15 policy with respect to unfair or deceptive acts or
16 practices in the provision of mortgage lending serv-
17 ices for a subprime federally related mortgage loan
18 and mortgage brokerage services for such a loan,
19 within the meaning of subsection (a); and

20 (2) regulations defining with specificity acts or
21 practices which are unfair or deceptive in the provi-
22 sion of mortgage lending services for a subprime fed-
23 erally related mortgage loan or mortgage brokerage
24 services for such a loan, within the meaning of sub-
25 section (a).

1 (c) COMPLIANCE ENFORCEMENT.—Any violation of
2 a regulation issued under subsection (b)(2) shall be treat-
3 ed as a violation of a requirement imposed under the
4 Truth in Lending Act and compliance with such regulation
5 shall be enforceable under sections 108 and 130 of such
6 Act.

7 (d) DEFINITIONS.—For purposes of this section, the
8 terms “mortgage brokerage services”, “mortgage lending
9 services”, and “subprime” have the meanings given such
10 terms in section 13(f) of the Real Estate Settlement Pro-
11 cedures Act of 1974 (12 U.S.C. 2611(f)).

12 (e) PENALTIES.—

13 (1) FIRST VIOLATION.—In addition to the en-
14 forcement provisions referred to in subsection (c),
15 each person who violates this section shall forfeit
16 and pay a civil penalty of not more than \$10,000 for
17 each day any such violation continues.

18 (2) SUBSEQUENT VIOLATIONS.—In the case of
19 any person on whom a civil penalty has been im-
20 posed under paragraph (1), paragraph (1) shall be
21 applied by substituting “\$20,000” for “\$10,000”
22 with respect to all subsequent violations.

23 (3) ASSESSMENT.—The agency referred to in
24 subsection (a) or (c) of section 108 of the Truth in
25 Lending Act with respect to any person described in

1 paragraph (1) shall assess any penalty under this
2 subsection to which such person is subject.

3 **SEC. 5. PROHIBITION ON ARBITRATION CLAUSES IMPOSED**
4 **ON CONSUMERS WITHOUT THEIR CONSENT.**

5 (a) IN GENERAL.—The Consumer Credit Protection
6 Act (15 U.S.C. 1601 et seq.) is amended by adding at
7 the end the following new title:

8 **“TITLE X—DISPUTE**
9 **RESOLUTION**

10 **“SEC. 1001. SHORT TITLE.**

11 “This title may be cited as the ‘Consumer Fairness
12 Act’.

13 **“SEC. 1002. DEFINITIONS.**

14 “For purposes of this title, the following definitions
15 shall apply:

16 “(1) CONSUMER.—The term ‘consumer’ means
17 any individual.

18 “(2) CONSUMER TRANSACTION.—The term
19 ‘consumer transaction’ means the sale or rental of
20 goods or services, the extension of credit, or the pro-
21 vision of any other financial product or service, to an
22 individual in a transaction entered into primarily for
23 personal, family, or household purposes, including
24 any consumer credit transaction that is secured by
25 the consumer’s principal dwelling.

1 “(3) CONSUMER CONTRACT.—The term ‘con-
2 sumer contract’ means any written, standardized
3 form contract between the parties to a consumer
4 transaction.

5 **“SEC. 1003. PROHIBITION ON ARBITRATION CLAUSES IM-
6 POSED ON CONSUMERS WITHOUT THEIR
7 CONSENT.**

8 “(a) IN GENERAL.—A written provision in any con-
9 sumer transaction or consumer contract which requires
10 binding arbitration to resolve any controversy arising out
11 of such transaction or contract, or the refusal to perform
12 the whole or any part of the transaction shall not be en-
13 forceable.

14 “(b) POST-CONTROVERSY AGREEMENTS.—Sub-
15 section (a) shall not apply with respect to a written agree-
16 ment to determine by binding arbitration an existing con-
17 troversy arising out of a consumer transaction or con-
18 sumer contract if the written agreement has been entered
19 into by the parties to the consumer transaction or con-
20 sumer contract after the controversy has arisen.

21 “(c) COORDINATION WITH OTHER LAW.—No provi-
22 sion of this section shall be construed as annulling, alter-
23 ing, affecting, or superseding any Federal law, or the laws
24 of any State, relating to arbitration in connection with
25 consumer transactions or consumer contracts, except to

1 the extent that those laws are inconsistent with the provi-
2 sions of this section, and then only to the extent of the
3 inconsistency.”.

4 (b) APPLICABILITY.—The amendments made by this
5 section shall apply to all consumer transactions and con-
6 sumer contracts entered into on, or after the date of the
7 enactment of this Act and to all controversies pending or
8 filed on, or arising after, the date of the enactment of this
9 Act.

10 **SEC. 6. GRANTS TO COMMUNITY DEVELOPMENT CORPORA-**
11 **TIONS FOR PREDATORY LENDING EDU-**
12 **CATION.**

13 (a) IN GENERAL.—The Community Development
14 Banking and Financial Institutions Act of 1994 (12
15 U.S.C. 4701 et seq.) is amended by adding at the end
16 the following new section:

17 **“SEC. 122. GRANTS TO COMMUNITY DEVELOPMENT COR-**
18 **PORATIONS FOR PREDATORY LENDING EDU-**
19 **CATION.**

20 “(a) IN GENERAL.—To the extent amounts are made
21 available under subsection (d), the Fund may make grants
22 to nonprofit community development corporations to pro-
23 vide education and training to borrowers, potential bor-
24 rowers, and community groups regarding illegal and inap-

1 appropriate practices, methods, practices, and terms of pred-
2 atory lending.

3 “(b) SELECTION.—The selection of community devel-
4 opment corporations to receive grants under this section
5 shall be at the discretion of the Fund and in accordance
6 with criteria established by the Fund.

7 “(c) GRANT AMOUNTS.—The Fund may establish a
8 limitation on the amount received by any single commu-
9 nity development corporation from grants under this sec-
10 tion for any single fiscal year.

11 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
12 is authorized to be appropriated to the Fund for grants
13 under this section \$1,000,000 for each of fiscal years 2003
14 and 2004.”.

15 (b) AMENDMENT TO TABLE OF CONTENTS.—The
16 table of contents in section 1(b) of the Riegle Community
17 Development and Regulatory Improvement Act of 1994
18 (12 U.S.C. 4701 note) is amended by inserting after the
19 item relating to section 121 the following new item:

“Sec. 122. Grants to community development corporations for predatory lend-
ing education.”.

○