

# **Predatory Mortgage Lending Practices Reduction Act (Introduced in House)**

HR 2061 IH1S

110th CONGRESS  
1st Session  
**H. R. 2061**

To protect home buyers from predatory lending practices.

## **IN THE HOUSE OF REPRESENTATIVES**

**April 26, 2007**

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

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### **A BILL**

To protect home buyers from predatory lending practices.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### **SECTION 1. SHORT TITLE.**

This Act may be cited as the `Predatory Mortgage Lending Practices Reduction Act'.

#### **SEC. 2. CERTIFICATION REQUIREMENTS FOR MORTGAGE LENDERS AND BROKERS.**

(a) In General- The Real Estate Settlement Procedures Act of 1974 is amended by inserting after section 12 (12 U.S.C. 2610) the following new section:

#### **` SEC. 13. CERTIFICATION REQUIREMENTS FOR MORTGAGE LENDERS AND BROKERS.**

` (a) Requirement- No person may, in connection with a subprime federally mortgage related loan, provide mortgage lending services or mortgage brokerage services unless such person is, at the time of the provision of such services, certified by the Secretary pursuant to this

section as having been adequately trained with regard to subprime lending.

ˆ (b) Standards and Examination-

ˆ (1) IN GENERAL- The Secretary shall, by regulation, establish requirements, standards, and procedures for testing and certifying persons providing mortgage lending services or mortgage brokerage services in connection with a subprime, federally related mortgage loans.

ˆ (2) EXAMINATION- Such standards and procedures shall require, for certification under this section, that the individual shall demonstrate, by written examination, knowledge regarding the following areas:

ˆ (A) FEDERAL LAW- The requirements and limitations under Federal laws regarding mortgage lending, including the Truth in Lending Act, the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act of 1974, the Home Ownership and Equity Protection Act of 1994, the Home Mortgage Disclosure Act of 1975, and the Fair Housing Act.

ˆ (B) SUBPRIME LENDING- Legal and appropriate practices, methods, conventions, and terms of subprime lending in all lending functions, including advertising and marketing, consumer education and counseling, origination, underwriting, closing, servicing, information technology, and internal control policies and procedures.

ˆ (C) PREDATORY LENDING- Illegal and inappropriate practices, methods, practices, and terms of predatory lending. The Secretary shall, by regulation, define the term 'predatory lending' for purposes of this subsection.

ˆ (D) LAW REGARDING COMPETENCY TO CONTRACT- Basic contract law regarding competency and incapacity to contract.

ˆ (c) Decertification- The Secretary shall establish standards and procedures for suspension and revocation of the certification under this section, which shall--

ˆ (1) provide the individual subject to suspension or revocation an opportunity to be heard; and

ˆ (2) provide for suspension or revocation in such instances as the Secretary determines appropriate, which shall include an agency determination or a judgment by a court of competent jurisdiction that a certified individual has engaged in an act or practice that is unfair or deceptive under section 5 of the Predatory Mortgage Lending Practices Reduction Act.

ˆ (d) Renewal of Certification- The Secretary shall provide that certification under this section shall be effective for a specified period of time, as determined by the Secretary. The Secretary shall establish standards and procedures for recertification of individuals whose

certifications are expiring. The Secretary shall establish a procedure for notifying certified individuals of the expiration of their certifications.

ˆ (e) Information and Training-

ˆ (1) IN GENERAL- The Secretary shall make available, for persons engaged in providing mortgage lending services and mortgage brokerage services, information and training in the areas described in subsection (b)(2). Such information and training shall be made available through classes, written materials, and the World Wide Web.

ˆ (2) CONTRACTS- The Secretary may enter into such agreements and contracts as the Secretary considers necessary to make information and training under this subsection available.

ˆ (3) AUTHORIZATION OF APPROPRIATIONS- For providing information and training under this subsection, there are authorized to be appropriated to the Secretary \$2,000,000 for each of fiscal years 2008 and 2009.

ˆ (f) Definitions- For purposes of this section, the following definitions shall apply:

ˆ (1) MORTGAGE BROKERAGE SERVICES- The term 'mortgage brokerage services' means the bringing together of a borrower and lender to obtain a federally related mortgage loan and the rendering of settlement services, by a person who is not an employee or exclusive agent of a lender.

ˆ (2) MORTGAGE LENDING SERVICES- The term 'mortgage lending services' means services relating to the origination of a federally related mortgage loan, including the taking of loan applications, loan processing, and the underwriting and funding of a loan.

ˆ (3) PRIME LENDING RATE- The term 'prime lending rate' means, with respect to a lender, the lowest interest rate charged by such lender to its most creditworthy customers.

ˆ (4) SUBPRIME-

ˆ (A) IN GENERAL- The term 'subprime' means, with respect to a federally related mortgage loan, that the borrower under the loan, or the loan terms, exhibit characteristics that indicate that the loan is subject to a significantly higher risk of default than federally related mortgage loans made to borrowers at prime lending rates.

ˆ (B) REGULATIONS- The Secretary shall prescribe regulations to carry out this paragraph, which shall specify characteristics referred to in subparagraph (A) that indicate a higher risk of default and shall establish criteria based on such characteristics for determining whether a federally related mortgage loan is a subprime loan. Such characteristics shall include--

ˆ (i) higher loan fees or penalties;

- ˘ (ii) higher interest rates;
- ˘ (iii) higher debt-to-income ratios;
- ˘ (iv) a history of loan delinquency;
- ˘ (v) higher loan-to-value ratios;
- ˘ (vi) lower credit scores or other credit ratings;
- ˘ (vii) more recent declaration of bankruptcy;
- ˘ (viii) lack of a credit history; and
- ˘ (ix) any other factors that the Secretary considers appropriate.'.

(b) Regulations- Not later than 6 months after the date of the enactment of this Act, the Secretary of Housing and Urban Development shall issue regulations pursuant to section 19(a) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2617(a)) as may be necessary to carry out the amendment made by subsection (a) of this section.

### **SEC. 3. LENDER REQUIREMENTS FOR HIGH COST MORTGAGES.**

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

- ˘ (m) Best Practices Plan-
  - ˘ (1) IN GENERAL- Any creditor who extends credit in connection with a mortgage referred to in section 103(aa) shall establish and maintain a best practices plan, in accordance with regulations which the Board shall prescribe, to ensure compliance with the requirements of this title.
  - ˘ (2) REQUIREMENTS- The best practices plan established under paragraph (1) by any creditor shall require the creditor, and any subcontractor or agent of the creditor to--
    - ˘ (A) provide all employees of the creditor, subcontractor, or agent who are involved in any aspect of an extension of credit in connection with a mortgage referred to in section 103(aa), and any subcontractor or agent of such creditor so involved, with such training in the best practices plan of the creditor as the Board determines by regulation to be appropriate; and
    - ˘ (B) periodically review and evaluate the performance of such employees, contractors, and agents under the best practices plan.
- ˘ (n) Good Faith Resolution of Complaints- A creditor, and any agent or assignee of the creditor--
  - ˘ (1) shall make a good faith effort to resolve any consumer complaint concerning improper or questionable lending practices with respect to a mortgage referred to in section 103(aa) before the end of the 60-day period beginning on the date the complaint is received by the creditor, agent or assignee; and

- ˆ (2) may take no action, directly or indirectly, including seeking any remedy in law or equity, to collect the amount of any mortgage referred to in paragraph (1), or any part of such amount, or otherwise enforce the mortgage against the consumer or the property securing the mortgage, during such 60-day period (and any time limit for bringing an action to collect any such amount shall toll during such period and any civil action filed before the beginning of such period in any court shall be suspended during such period).
- ˆ (o) Prohibition on Charges Not Previously Disclosed- A creditor, or an agent or assignee of a creditor, may not impose any charge or fee, or attempt to collect any charge or fee, in connection with a mortgage referred to in section 103(aa) that was not disclosed before the mortgage was executed, or impose or attempt to collect any charge or fee that was so disclosed in an amount in excess of the amount disclosed, unless the creditor or assignee establishes, in accordance with regulations which the Board shall prescribe, that the charge or fee is reasonable and could not have reasonably been foreseen at the time the mortgage was executed.
- ˆ (p) Plain Description and Disclosure Requirement-
  - ˆ (1) CHARGES AND FEES- Notwithstanding any other provision of this title, all disclosures of charges and fees required under this title with regard to a mortgage referred to in section 103(aa), shall be separately enumerated and clearly labeled, stated, and described, including charges described in clause (ii) or (iii) of section 128(a)(2)(A).
  - ˆ (2) RESCISSION AND OTHER RIGHTS- The disclosure required under the penultimate sentence of section 125(a) in connection with a mortgage referred to in section 103(aa), together with a summary of the consumer's rights, shall be provided to the consumer in clear and plain language not less than 24 hours before the mortgage is executed.'

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

- (a) Prohibition- It shall be unlawful, in providing any mortgage lending services for a subprime federally related mortgage loan or any mortgage brokerage services for such a loan, to engage in any unfair or deceptive act or practice, which shall include, in the case of any appraisal of a property offered as security for repayment of the loan that is conducted in connection with such loan--
  - (1) directly or indirectly, compensating, coercing, or intimidating a person conducting or involved in an appraisal, or attempting, directly or indirectly, to compensate, coerce, or intimidate such a person, for the purpose of causing the appraised value assigned under the appraisal to the property to be based on any factor other than the independent judgment of the appraiser; and

(2) knowingly submitting a false or misleading appraisal in connection with the loan.

(b) Rulemaking Proceedings- The Secretary of Housing and Urban Development, the Board of Governors of the Federal Reserve System, and the Federal Trade Commission may jointly issue--

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

(2) regulations defining with specificity acts or practices which are unfair or deceptive in the provision of mortgage lending services for a subprime federally related mortgage loan or mortgage brokerage services for such a loan, within the meaning of subsection (a).

(c) Compliance Enforcement- Any violation of a regulation issued under subsection (b)(2) shall be treated as a violation of a requirement imposed under the Truth in Lending Act and compliance with such regulation shall be enforceable under sections 108 and 130 of such Act.

(d) Definitions- For purposes of this section, the terms `mortgage brokerage services', `mortgage lending services', and `subprime' have the meanings given such terms in section 13(f) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2611(f)).

(e) Penalties-

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

(2) SUBSEQUENT VIOLATIONS- In the case of any person on whom a civil penalty has been imposed under paragraph (1), paragraph (1) shall be applied by substituting ` \$20,000' for ` \$10,000' with respect to all subsequent violations.

(3) ASSESSMENT- The agency referred to in subsection (a) or (c) of section 108 of the Truth in Lending Act with respect to any person described in paragraph (1) shall assess any penalty under this subsection to which such person is subject.

## **SEC. 5. PROHIBITION ON CERTAIN ARBITRATION CLAUSES.**

(a) In General- The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.) is amended by adding at the end the following new title:

### **` TITLE X--DISPUTE RESOLUTION**

#### **` SEC. 1001. SHORT TITLE.**

^ This title may be cited as the ^ Consumer Fairness Act'.

## **^ SEC. 1002. DEFINITIONS.**

^ For purposes of this title, the following definitions shall apply:

^ (1) CONSUMER- The term ^ consumer' means any individual.

^ (2) CONSUMER TRANSACTION- The term ^ consumer transaction' means the sale or rental of goods or services, the extension of credit, or the provision of any other financial product or service, to an individual in a transaction entered into primarily for personal, family, or household purposes, including any consumer credit transaction that is secured by the consumer's principal dwelling.

^ (3) CONSUMER CONTRACT- The term ^ consumer contract' means any written, standardized form contract between the parties to a consumer transaction.

## **^ SEC. 1003. PROHIBITION ON ARBITRATION CLAUSES IMPOSED ON CONSUMERS WITHOUT THEIR CONSENT.**

^ (a) In General- A written provision in any consumer transaction or consumer contract which requires binding arbitration to resolve any controversy arising out of such transaction or contract, or the refusal to perform the whole or any part of the transaction shall not be enforceable.

^ (b) Post-Controversy Agreements- Subsection (a) shall not apply with respect to a written agreement to determine by binding arbitration an existing controversy arising out of a consumer transaction or consumer contract if the written agreement has been entered into by the parties to the consumer transaction or consumer contract after the controversy has arisen.

^ (c) Coordination With Other Law- No provision of this section shall be construed as annulling, altering, affecting, or superseding any Federal law, or the laws of any State, relating to arbitration in connection with consumer transactions or consumer contracts, except to the extent that those laws are inconsistent with the provisions of this section, and then only to the extent of the inconsistency.'

(b) Applicability- The amendments made by this section shall apply to all consumer transactions and consumer contracts entered into on, or after the date of the enactment of this Act and to all controversies pending or filed on, or arising after, the date of the enactment of this Act.

## **SEC. 6. GRANTS TO COMMUNITY DEVELOPMENT CORPORATIONS FOR PREDATORY LENDING EDUCATION.**

(a) In General- The Community Development Banking and Financial Institutions Act of 1994 (12 U.S.C. 4701 et seq.) is amended by adding at the end the following new section:

**^ SEC. 122. GRANTS TO COMMUNITY DEVELOPMENT CORPORATIONS FOR PREDATORY LENDING EDUCATION.**

^ (a) In General- To the extent amounts are made available under subsection (d), the Fund may make grants to nonprofit community development corporations to provide education and training to borrowers, potential borrowers, and community groups regarding illegal and inappropriate practices, methods, practices, and terms of predatory lending.

^ (b) Selection- The selection of community development corporations to receive grants under this section shall be at the discretion of the Fund and in accordance with criteria established by the Fund.

^ (c) Grant Amounts- The Fund may establish a limitation on the amount received by any single community development corporation from grants under this section for any single fiscal year.

^ (d) Authorization of Appropriations- There is authorized to be appropriated to the Fund for grants under this section \$2,000,000 for each of fiscal years 2008 and 2009.'

(b) Amendment to Table of Contents- The table of contents in section 1(b) of the Riegle Community Development and Regulatory Improvement Act of 1994 (12 U.S.C. 4701 note) is amended by inserting after the item relating to section 121 the following new item:

^ Sec. 122. Grants to community development corporations for predatory lending education.'

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