

107TH CONGRESS
1ST SESSION

H. R. 1053

To amend the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act of 1975 to reduce the disparate impact of predatory lending on minorities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 15, 2001

Mr. LAFALCE (for himself, Mr. GUTIERREZ, Ms. LEE, Mrs. JONES of Ohio, Mr. CAPUANO, Mr. CLAY, Mr. HINCHEY, and Ms. SCHAKOWSKY) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To amend the Equal Credit Opportunity Act and the Home Mortgage Disclosure Act of 1975 to reduce the disparate impact of predatory lending on minorities, 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 “Equal Credit Enhance-
5 ment and Neighborhood Protection Act of 2001”.

1 **SEC. 2. COMBATING DISCRIMINATORY STEERING AND RE-**
2 **VERSE REDLINING.**

3 (a) DISCRIMINATORY STEERING AND REVERSE RED-
4 LINING PROHIBITED.—Section 701 of the Equal Credit
5 Opportunity Act (15 U.S.C. 1691) is amended—

6 (1) by striking “(a) It shall be unlawful” and
7 inserting “(a) IN GENERAL.—It shall be unlawful”;

8 (2) by redesignating subsections (b), (c), (d),
9 and (e) as subsections (d), (e), (f), and (g), respec-
10 tively; and

11 (3) by inserting after subsection (a) the fol-
12 lowing new subsections:

13 “(b) MOST FAVORABLE CREDIT TERMS.—

14 “(1) IN GENERAL.—It shall be unlawful for a
15 creditor to fail to extend credit to an applicant
16 under the most favorable terms available from the
17 creditor, or an affiliate of the creditor, for which the
18 applicant qualifies.

19 “(2) AFFILIATE DEFINED.—For purposes of
20 this subsection, the term ‘affiliate’ has the same
21 meaning given such term in section 2(k) of the Bank
22 Holding Company Act of 1956.

23 “(c) TARGETING HIGH-COST MORTGAGES PROHIB-
24 ITED.—

25 “(1) IN GENERAL.—It shall be unlawful for any
26 creditor to adversely target an applicant or group of

1 applicants on the basis of race, color, religion, na-
2 tional origin, sex, marital status or age, with respect
3 to a high cost mortgage.

4 “(2) HIGH COST MORTGAGE DEFINED.—

5 “(A) IN GENERAL.—For purposes of this
6 title, the term ‘high cost mortgage’ means a
7 consumer credit transaction—

8 “(i) that is secured by the consumer’s
9 principal dwelling, other than a reverse
10 mortgage transaction; and

11 “(ii) the terms of which are described
12 in at least 1 of the following subclauses:

13 “(I) The transaction is secured
14 by a first mortgage on the consumer’s
15 principal dwelling and the annual per-
16 centage rate on the credit, at the con-
17 summation of the transaction, will ex-
18 ceed by more than 6 percentage
19 points the yield on Treasury securities
20 having comparable periods of maturity
21 on the 15th day of the month imme-
22 diately preceding the month in which
23 the application for the extension of
24 credit is received by the creditor;

1 “(II) The transaction is secured
2 by a junior or subordinate mortgage
3 on the consumer’s principal dwelling
4 and the annual percentage rate on the
5 credit, at the consummation of the
6 transaction, will exceed by more than
7 8 percentage points the yield on
8 Treasury securities having comparable
9 periods of maturity on the 15th day of
10 the month immediately preceding the
11 month in which the application for the
12 extension of credit is received by the
13 creditor.

14 “(III) The total points and fees
15 payable on the transaction will exceed
16 the greater of 5 percent of the total
17 loan amount or \$1,000.

18 “(B) INTRODUCTORY RATES NOT TAKEN
19 INTO ACCOUNT.—If the terms of any consumer
20 credit transaction that is secured by the con-
21 sumer’s principal dwelling offer, for any initial
22 or introductory period, an annual percentage
23 rate of interest which—

24 “(i) is less than the annual percentage
25 rate of interest which will apply after the

1 end of such initial or introductory period;
2 or

3 “(ii) in the case of an annual percent-
4 age rate which varies in accordance with
5 an index, which is less than the current
6 annual percentage rate under the index
7 which will apply after the end of such pe-
8 riod,

9 the annual percentage rate of interest that shall
10 be taken into account for purposes of sub-
11 clauses (I) and (II) of subparagraph (A)(ii)
12 shall be the rate described in clause (i) or (ii)
13 of this subparagraph rather than any rate in ef-
14 fect during the initial or introductory period.

15 “(3) NO NEGATIVE IMPLICATION.—No provi-
16 sion of this subsection shall be construed as prohib-
17 iting a nonprofit entity or government agency from
18 promoting a program that enhances the availability
19 of mortgage credit on fair terms, as defined in regu-
20 lations that the Secretary shall prescribe, to under-
21 served persons and communities.”.

22 (b) ENHANCED GENERAL DAMAGES FOR REVERSE
23 REDLINING.—Section 706 of the Equal Credit Oppor-
24 tunity Act (15 U.S.C. 1691e) is amended—

1 (1) by striking “(a) Any creditor” and inserting
2 “(a) ACTUAL DAMAGES.—Any creditor”;

3 (2) by striking “(b) Any creditor” and inserting
4 “(b) GENERAL DAMAGES.—

5 “(1) IN GENERAL.—Any creditor”; and

6 (3) by adding at the end of subsection (b) the
7 following new paragraph:

8 “(2) PUNITIVE DAMAGES FOR REVERSE RED-
9 LINING.—Any creditor, other than a government or
10 governmental subdivision or agency, who fails to
11 comply with any requirement imposed under sub-
12 section (b) or (c) of section 701 shall be liable—

13 “(A) to the aggrieved applicant for puni-
14 tive damages in an amount not greater than
15 \$20,000, in addition to any actual damages
16 provided in subsection (a) of this section; and

17 “(B) except in the case of a class action
18 the total recovery under this paragraph shall
19 not exceed the greater of—

20 “(i) the amount determined by multi-
21 plying the maximum amount of liability
22 under subparagraph (A) for such failure to
23 comply in an individual action by the num-
24 ber of members of the certified class; or

1 “(ii) the amount equal to 2 percent of
2 the net worth of the creditor.”.

3 **SEC. 3. APPLICABILITY OF EQUAL CREDIT OPPORTUNITY**
4 **ACT TO REQUESTS FOR PREAPPROVALS.**

5 Section 702(b) of the Equal Credit Opportunity Act
6 (15 U.S.C. 1691a(b)) is amended by inserting the fol-
7 lowing before the period at the end: “and includes any per-
8 son who requests a written commitment from a creditor
9 for a home purchase loan, even if the person requests a
10 commitment to be issued subject to the identification of
11 a suitable property or other condition”.

12 **SEC. 4. PROHIBITION ON CERTAIN REGULATORY EXEMP-**
13 **TIONS UNDER THE HOME MORTGAGE DIS-**
14 **CLOSURE ACT OF 1977.**

15 Section 304 of the Home Mortgage Disclosure Act
16 of 1975 (12 U.S.C. 2803) is amended by adding at the
17 end the following new subsection:

18 “(n) PROHIBITION ON REGULATORY EXEMPTIONS
19 FROM REPORTING REQUIREMENTS.—Subject to sub-
20 section (i)—

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

1 “(2) any exemption from the requirements of
 2 this title provided in any regulation, such as the ex-
 3 emption provided in Appendix A to part 203 of the
 4 Code of Federal Regulations for lending institutions
 5 described in section 303(2)(B) whose total dollar
 6 amount of purchase loans originated in any year did
 7 not exceed 10 percent of the total dollar amount of
 8 all loan originations by such institution in such year,
 9 shall cease to be effective as of the date of the enact-
 10 ment of the Equal Credit Enhancement and Neighbor-
 11 hood Protection Act.”.

12 **SEC. 5. ADDITIONAL DISCLOSURES UNDER THE HOME**
 13 **MORTGAGE DISCLOSURE ACT OF 1977.**

14 (a) REASON FOR DENIAL.—Paragraph (4) of section
 15 304(b) of the Home Mortgage Disclosure Act of 1975 (12
 16 U.S.C. 2803(b)(4)) is amended by inserting “(and the rea-
 17 sons for denial of a loan in the case of completed applica-
 18 tion, as appropriate)” after “completed applications”.

19 (b) APR AND FEES.—Section 304(b) of the Home
 20 Mortgage Disclosure Act of 1975 (12 U.S.C. 2803(b)) is
 21 amended—

22 (1) by striking “and” at the end of paragraph
 23 (3);

24 (2) by striking the period at the end of para-
 25 graph (4) and inserting a semicolon; and

1 (3) by adding at the end the following new
2 paragraph:

3 “(5) annual percentage rate (as determined
4 under section 107 of the Truth in Lending Act) of
5 mortgage loans, along with all costs of credit, which
6 shall include all finance charges (as determined
7 under section 106 of the Truth in Lending Act),
8 costs of all insurance premiums paid within 90 days
9 of a loan’s origination, fees and amounts imposed by
10 third party closing agents and all fees collected by
11 mortgage brokers, and an indication of whether a
12 loan is subject to the Homeownership Equity Protec-
13 tion Act of 1994, grouped according to census tract,
14 income level, racial characteristics and gender;”.

15 (c) DEBT-TO-INCOME RATIO FOR CERTAIN LOANS.—
16 Section 304(b) of the Home Mortgage Disclosure Act of
17 1975 (12 U.S.C. 2803(b)) is amended by inserting after
18 paragraph (5) (as added by subsection (b)(3) of this sec-
19 tion) the following new paragraph:

20 “(6) for each mortgage loan, the ratio of the
21 mortgagor’s debt to the mortgagor’s income;”.

22 (d) MANUFACTURED HOUSING.—Section 304(b) of
23 the Home Mortgage Disclosure Act of 1975 (12 U.S.C.
24 2803(b)) is amended by inserting after paragraph (6) (as

1 added by subsection (c) of this section) the following new
2 paragraph:

3 “(7) for each mortgage loan, indication of
4 whether repayment of the loan is secured by a lien
5 on a manufactured home;”.

6 (e) LOAN-TO-VALUE RATIO.—Section 304(b) of the
7 Home Mortgage Disclosure Act of 1975 (12 U.S.C.
8 2803(b)) is amended by inserting after paragraph (7) (as
9 added by subsection (d) of this section) the following new
10 paragraph:

11 “(8) for each mortgage loan, the ratio of the
12 value of the real estate (including a manufactured
13 home, as appropriate) that secures repayment of the
14 loan to the principal amount of the loan at the time
15 of origination; and”

16 (f) RACE, AGE, AND GENDER OF ALL APPLI-
17 CANTS.—Section 304(b) of the Home Mortgage Disclosure
18 Act of 1975 (12 U.S.C. 2803(b)) is amended by inserting
19 after paragraph (8) (as added by subsection (e) of this
20 section) the following new paragraph:

21 “(9) for each completed application, including
22 applications taken by telephone or electronically, the
23 racial characteristics, age, and gender of each appli-
24 cant.”

1 (g) INVOLVEMENT OF MORTGAGE BROKERS.—Sec-
 2 tion 304(b) of the Home Mortgage Disclosure Act of 1975
 3 (12 U.S.C. 2803(b)) is amended by inserting after para-
 4 graph (9) (as added by subsection (f) of this section) the
 5 following new paragraph:

6 “(9) the number and dollar amounts of mort-
 7 gage loans and loan applications (whether completed
 8 or not) with respect to which a mortgage broker (as
 9 defined in regulations prescribed under the Real Es-
 10 tate Settlement Procedures Act of 1974) was in-
 11 volved at any stage of the loan process.”.

12 (h) TECHNICAL AND CONFORMING AMENDMENTS.—
 13 Section 304(h) of the Home Mortgage Disclosure Act of
 14 1975 (12 U.S.C. 2803(b)) is amended by striking “sub-
 15 section (b)(4)” each place such term appears and inserting
 16 “paragraph (4), (5), (6), (7), (8), (9), or (10) of sub-
 17 section (b)”.

18 **SEC. 6. DISCLOSURE OF PARENT COMPANY.**

19 Section 304 of the Home Mortgage Disclosure Act
 20 of 1975 (12 U.S.C. 2803) is amended by inserting after
 21 subsection (n) (as added by section 4 of this Act) the fol-
 22 lowing new subsection:

23 “(o) OBLIGATION TO IDENTIFY PARENT.—

24 “(1) IN GENERAL.—In each disclosure and sub-
 25 mission required by this title, each depository insti-

1 tution shall clearly identify the company that con-
 2 trols the depository institution and any affiliate of
 3 the depository institution that makes mortgage loans
 4 or provides financing for such loans.

5 “(2) CONTROL DEFINED.—For purposes of this
 6 subsection, the term ‘control’ shall have the same
 7 meaning given such term in section 2 of the Bank
 8 Holding Company Act of 1956.”.

9 **SEC. 7. APPLICATION INCLUDES REQUESTS FOR**
 10 **PREAPPROVAL.**

11 Section 303(3) of the Home Mortgage Disclosure Act
 12 of 1975 (12 U.S.C. 2802(3)) is amended by inserting
 13 “and includes any request for a written commitment from
 14 a depository institution for a home purchase loan, even
 15 if the applicant requests a commitment to be issued sub-
 16 ject to the identification of a suitable property or other
 17 condition” before the semicolon at the end.

18 **SEC. 8. SANCTIONS AGAINST MORTGAGE LENDERS NOT AF-**
 19 **FILIATED WITH DEPOSITORY INSTITUTIONS.**

20 Section 305 of the Home Mortgage Disclosure Act
 21 of 1975 (12 U.S.C. 2804) is amended—

22 (1) in subsection (b)—

23 (A) by inserting “and” after the semicolon
 24 at the end of paragraph (2);

1 (B) by striking “; and” at the end of para-
2 graph (3) and inserting a period; and

3 (C) by striking paragraph (4);

4 (2) by redesignating subsection (c) as sub-
5 section (e); and

6 (3) by inserting after subsection (b), the fol-
7 lowing new subsection:

8 “(c) POWERS OF THE SECRETARY OF HOUSING AND
9 URBAN DEVELOPMENT.—

10 “(1) IN GENERAL.—The Secretary of Housing
11 and Urban Development (hereafter in this sub-
12 section referred to as ‘the Secretary’) shall enforce
13 compliance with the requirements imposed under
14 this title with regard to other lending institutions
15 not described in subsection (b).

16 “(2) CIVIL MONEY PENALTIES.—Pursuant to
17 paragraph (1) of this subsection, the Secretary may
18 impose a civil money penalty for failure to comply
19 with the requirements of this Act.

20 “(3) AMOUNT OF PENALTY.—The amount of
21 the penalty, as determined by the Secretary, may
22 not exceed \$5,000 for each violation, except that the
23 maximum penalty for all violations by any particular
24 lending institution during any 1-year period shall
25 not exceed \$1,000,000.

1 “(4) VIOLATIONS FOR WHICH PENALTY MAY BE
2 IMPOSED.—A civil money penalty may be imposed
3 for the late submission of a report, failure to submit
4 a report, submission of an illegible report, submis-
5 sion of an erroneous report, and failure to submit
6 corrections to a report that was illegible or erro-
7 neous.

8 “(5) AGENCY PROCEDURES.—

9 “(A) ESTABLISHMENT.—The Secretary
10 shall establish standards and procedures gov-
11 erning the imposition of civil money penalties
12 under this section. These standards and proce-
13 dures shall provide for the Secretary to make
14 the determination to impose the penalty or to
15 use in administrative entity (such as the Mort-
16 gagee Review Board, established pursuant to
17 section 202(c) of the National Housing Act) to
18 make the determination, shall provide for the
19 imposition of a penalty only after the lending
20 institution has been given an opportunity for a
21 hearing on a record, and may provide for review
22 by the Secretary of a determination on order, or
23 interlocutory ruling, arising from a hearing.

24 “(B) FINAL ORDERS.—If no hearing is re-
25 quested within 15 days of receipt of the notice

1 of opportunity for hearing, the imposition of the
2 penalty shall constitute a final and
3 unappealable determination. If the Secretary re-
4 views the determination or order, the Secretary
5 may affirm, modify, or reverse that determina-
6 tion or order. If the Secretary does not review
7 the determination or order within 90 days of
8 the issuance of the determination or order, the
9 determination or order shall be final.

10 “(C) FACTORS IN DETERMINING AMOUNT
11 OF PENALTY.—In determining the amount of a
12 penalty under this subsection, consideration
13 shall be given to such factors as the gravity of
14 the offense, any history of prior offenses, ability
15 to pay the penalty, deterrence of future viola-
16 tions, and such other factors as the Secretary
17 may determine to be appropriate.

18 “(D) REVIEWABILITY OF IMPOSITION OF
19 PENALTY.—The Secretary’s determination or
20 order imposing a penalty under this subsection
21 shall not be subject to review, except as pro-
22 vided in this subsection.

23 “(6) JUDICIAL REVIEW OF AGENCY DETER-
24 MINATION.—

1 “(A) IN GENERAL.—After exhausting all
2 administrative remedies established by the Sec-
3 retary under this subsection, a lending institu-
4 tion against whom the Secretary has imposed a
5 civil money penalty under this subsection may
6 obtain a review of the penalty as may be ad-
7 dressed in the notice of determination to impose
8 a penalty in the appropriate court of appeals of
9 the United States, by filing in such court, with-
10 in 20 days after the entry of such order or de-
11 termination, a written petition praying that the
12 Secretary’s determination or order be modified
13 or set aside in whole or in part.

14 “(B) OBJECTIONS NOT RAISED IN HEAR-
15 ING.—

16 “(i) IN GENERAL.—The court shall
17 not consider any objection that was not
18 raised in the hearing conducted pursuant
19 to this subsection unless a demonstration
20 is made of extraordinary circumstances
21 causing the failure to raise the objection.

22 “(ii) REMAND OF NEW EVIDENCE.—If
23 any party demonstrates to the satisfaction
24 of the court that additional evidence not
25 presented at the hearing is material and

1 that there were reasonable grounds for the
2 failure to present such evidence at the
3 hearing, the court shall remand the matter
4 to the Secretary for consideration of the
5 additional evidence.

6 “(C) SCOPE OF REVIEW.—The decisions,
7 findings, and determinations of the Secretary
8 shall be reviewed pursuant to section 706 of
9 title 5, United States Code.

10 “(D) ORDER TO PAY PENALTY.—Notwith-
11 standing any other provision of law, in any such
12 review, the court shall have the power to order
13 payment of the penalty imposed by the Sec-
14 retary.

15 “(7) ACTION TO COLLECT PENALTY.—

16 “(A) ACTION BY ATTORNEY GENERAL.—If
17 a lending institution fails to comply with the
18 Secretary’s determination or order imposing a
19 civil money penalty under this subsection, after
20 the determination or order is no longer subject
21 to review as provided by this subsection, the
22 Secretary may request the Attorney General to
23 bring an action in an appropriate United States
24 district court to obtain a monetary judgment
25 against the lending institution.

1 “(B) SCOPE OF REVIEW.—In such an ac-
2 tion, the validity and appropriateness of the
3 Secretary’s determination or order imposing the
4 penalty shall not be subject to review.

5 “(C) RECOVERY OF COSTS OF FEDERAL
6 ACTION.—The money judgment may, in the
7 court’s discretion, include the attorneys fees
8 and other expenses incurred by the United
9 States in connection with the action.

10 “(8) SETTLEMENT BY SECRETARY.—The Sec-
11 retary may compromise, modify, or remit any civil
12 money penalty which may be imposed under this
13 subsection.

14 “(9) REGULATIONS.—The Secretary shall issue
15 such regulations as the Secretary deems appropriate
16 to implement this subsection.

17 “(10) RETENTION AND USE OF PENALTIES.—
18 Notwithstanding any other provisions of law, all civil
19 money penalties collected under this subsection shall
20 be deposited in a revolving fund established by the
21 Secretary, to be available without fiscal year limita-
22 tion for enforcement of the requirements of this title
23 and for data improvement activities of the Secretary
24 in connection with the reporting requirements of this
25 title.”.

1 **SEC. 9. ALTERNATIVE ENFORCEMENT BY STATES.**

2 Section 305 of the Home Mortgage Disclosure Act
3 of 1975 (12 U.S.C. 2804) is amended by inserting after
4 subsection (c) (as added by section 8 of this Act) the fol-
5 lowing new subsection:

6 “(d) ALTERNATIVE ENFORCEMENT BY STATES.—

7 “(1) STATE REQUEST FOR ENFORCEMENT AC-
8 TION.—A State may request in writing that the Sec-
9 retary take an action permitted under subsection (c)
10 to enforce compliance with the Act by a depository
11 institution doing business within such State.

12 “(2) STATE ENFORCEMENT ACTION.—If the
13 Secretary fails to initiate any action requested by a
14 State in accordance with paragraph (1) within 30
15 days of receipt of such a request, the State shall
16 have the authority to bring an action against such
17 depository institution to impose any penalty per-
18 mitted under subsection (c).

19 “(3) VENUE.—An enforcement action under
20 paragraph (2) may be brought in any United States
21 district court in which such depository institution
22 does business within the State.”.

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