

107TH CONGRESS  
1ST SESSION

# H. R. 2753

To require a housing impact analysis of any new rule of a Federal agency that has an economic impact of \$100,000,000 or more.

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## IN THE HOUSE OF REPRESENTATIVES

AUGUST 2, 2001

Mr. GREEN of Wisconsin (for himself, Ms. VELÁZQUEZ, Mr. SCHAFER, Mr. JONES of North Carolina, Mr. RUSH, Mr. GONZALEZ, and Mr. SOUDER) introduced the following bill; which was referred to the Committee on the Judiciary

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## A BILL

To require a housing impact analysis of any new rule of a Federal agency that has an economic impact of \$100,000,000 or more.

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 “Housing Affordability  
5       Assurance Act”.

6       **SEC. 2. HOUSING IMPACT ANALYSIS.**

7       (a) APPLICABILITY.—Except as provided in sub-  
8       section (b), the requirements of this section shall apply  
9       with respect to—

1           (1) any proposed rule, unless the agency pro-  
2       mulgating the rule—

3           (A) has certified that the proposed rule  
4       will not, if given force or effect as a final rule,  
5       have a significant deleterious impact on housing  
6       affordability; and

7           (B) has caused such certification to be  
8       published in the Federal Register at the time of  
9       publication of general notice of proposed rule-  
10      making for the rule, together with a statement  
11      providing the factual basis for the certification;  
12      and

13          (2) any final rule, unless the agency promul-  
14      gating the rule—

15          (A) has certified that the rule will not, if  
16      given force or effect, have a significant deleterious  
17      impact on housing affordability; and

18          (B) has caused such certification to be  
19      published in the Federal Register at the time of  
20      publication of the final rule, together with a  
21      statement providing the factual basis for the  
22      certification.

23   Any agency making a certification under this subsection  
24   shall provide a copy of such certification and the state-

1 ment providing the factual basis for the certification to  
2 the Secretary of Housing and Urban Development.

3 (b) EXCEPTION FOR CERTAIN BANKING RULES.—

4 The requirements of this section shall not apply to any  
5 proposed or final rule relating to—

6 (1) the operations, safety, or soundness of—

7 (A) federally insured depository institu-  
8 tions or any affiliate of such an institution (as  
9 such term is defined in section 2(k) of the Bank  
10 Holding Company Act of 1956 (12 U.S.C.  
11 1841(k));

12 (B) credit unions;

13 (C) the Federal home loan banks;

14 (D) the enterprises (as such term is de-  
15 fined in section 1303 of the Housing and Com-  
16 munity Development Act of 1992 (12 U.S.C.  
17 4502);

18 (E) a Farm Credit System institution; or

19 (F) foreign banks or their branches, agen-  
20 cies, commercial lending companies, or rep-  
21 resentative offices that operate in the United  
22 States, or any affiliate of a foreign bank (as  
23 such terms are defined in section 1 of the Inter-  
24 national Banking Act of 1978 (12 U.S.C.  
25 3101); or

1           (2) the payments system or the protection of  
2       deposit insurance funds or the Farm Credit Insur-  
3       ance Fund.

4       (c) STATEMENT OF PROPOSED RULEMAKING.—

5       Whenever an agency publishes general notice of proposed  
6       rulemaking for any proposed rule, unless the agency has  
7       made a certification under subsection (a), the agency  
8       shall—

9           (1) in the notice of proposed rulemaking—

10               (A) state with particularity the text of the  
11               proposed rule; and

12               (B) request any interested persons to sub-  
13               mit to the agency any written analyses, data,  
14               views, and arguments, and any specific alter-  
15               natives to the proposed rule;

16           (2) provide an opportunity for interested per-  
17       sons to take the actions specified under paragraph  
18       (1)(B) before promulgation of the final rule; and

19           (3) prepare and make available for public com-  
20       ment an initial housing impact analysis in accord-  
21       ance with the requirements of subsection (d).

22       (d) INITIAL HOUSING IMPACT ANALYSIS.—

23           (1) REQUIREMENTS.—Each initial housing im-  
24       pact analysis shall describe the impact of the pro-  
25       posed rule on housing affordability. The initial hous-

1 ing impact analysis or a summary shall be published  
2 in the Federal Register at the same time as, and to-  
3 gether with, the publication of general notice of pro-  
4 posed rulemaking for the rule. The agency shall  
5 transmit a copy of the initial housing impact anal-  
6 ysis to the Secretary of Housing and Urban Devel-  
7 opment.

8 (2) CONTENTS.—Each initial housing impact  
9 analysis required under this subsection shall  
10 contain—

11 (A) a description of the reasons why action  
12 by the agency is being considered;

13 (B) a succinct statement of the objectives  
14 of, and legal basis for, the proposed rule;

15 (C) a description of and, where feasible, an  
16 estimate of the extent to which the proposed  
17 rule would increase the cost or reduce the sup-  
18 ply of housing or land for residential develop-  
19 ment; and

20 (D) an identification, to the extent prac-  
21 ticable, of all relevant Federal rules which may  
22 duplicate, overlap, or conflict with the proposed  
23 rule.

24 (e) FINAL HOUSING IMPACT ANALYSIS.—

1           (1) REQUIREMENT.—Whenever an agency pro-  
2           mulgates a final rule after publication of a general  
3           notice of proposed rulemaking, unless the agency has  
4           made the certification under subsection (a), the  
5           agency shall prepare a final housing impact analysis.

6           (2) CONTENTS.—Each final housing impact  
7           analysis shall contain—

8                   (A) a succinct statement of the need for,  
9                   and objectives of, the rule;

10                   (B) a summary of the significant issues,  
11                   analyses, and alternatives to the proposed rule  
12                   raised during the public comment period in re-  
13                   sponse to the proposed rule and initial housing  
14                   impact analysis, a summary of the assessment  
15                   of the agency of such issues, analyses, and al-  
16                   ternatives, and a statement of any changes  
17                   made in the proposed rule as a result of such  
18                   comments; and

19                   (C) a description of and an estimate of the  
20                   extent to which the rule will impact housing af-  
21                   fordability or an explanation of why no such es-  
22                   timate is available.

23           (3) AVAILABILITY.—The agency shall make  
24           copies of the final housing impact analysis available  
25           to members of the public and shall publish in the

1 Federal Register such analysis or a summary there-  
2 of.

3 (f) AVOIDANCE OF DUPLICATIVE OR UNNECESSARY  
4 ANALYSES.—

5 (1) DUPLICATION.—Any Federal agency may  
6 perform the analyses required by subsections (d) and  
7 (e) in conjunction with or as a part of any other  
8 agenda or analysis required by any other law, execu-  
9 tive order, directive, or rule if such other analysis  
10 satisfies the provisions of such subsections.

11 (2) JOINDER.—In order to avoid duplicative ac-  
12 tion, an agency may consider a series of closely re-  
13 lated rules as one rule for the purposes of sub-  
14 sections (d) and (e).

15 (g) PREPARATION OF ANALYSES.—In complying with  
16 the provisions of subsections (d) and (e), an agency may  
17 provide either a quantifiable or numerical description of  
18 the effects of a proposed rule or alternatives to the pro-  
19 posed rule, or more general descriptive statements if quan-  
20 tification is not practicable or reliable.

21 (h) EFFECT ON OTHER LAW.—The requirements of  
22 subsections (d) and (e) do not alter in any manner stand-  
23 ards otherwise applicable by law to agency action.

24 (i) PROCEDURE FOR WAIVER OR DELAY OF COMPLE-  
25 TION.—

1           (1) INITIAL HOUSING IMPACT ANALYSIS.—An  
2           agency head may waive or delay the completion of  
3           some or all of the requirements of subsection (d) by  
4           publishing in the Federal Register, not later than  
5           the date of publication of the final rule, a written  
6           finding, with reasons therefor, that the final rule is  
7           being promulgated in response to an emergency that  
8           makes compliance or timely compliance with the pro-  
9           visions of subsection (a) impracticable.

10          (2) FINAL HOUSING IMPACT ANALYSIS.—An  
11          agency head may not waive the requirements of sub-  
12          section (e). An agency head may delay the comple-  
13          tion of the requirements of subsection (e) for a pe-  
14          riod of not more than 180 days after the date of  
15          publication in the Federal Register of a final rule by  
16          publishing in the Federal Register, not later than  
17          such date of publication, a written finding, with rea-  
18          sons therefor, that the final rule is being promul-  
19          gated in response to an emergency that makes time-  
20          ly compliance with the provisions of subsection (e)  
21          impracticable. If the agency has not prepared a final  
22          housing impact analysis pursuant to subsection (e)  
23          within 180 days from the date of publication of the  
24          final rule, such rule shall lapse and have no force  
25          or effect. Such rule shall not be repromulgated until



1 a final housing impact analysis has been completed  
2 by the agency.

3 (j) DEFINITIONS.—For purposes of this section, the  
4 following definitions shall apply:

5 (1) HOUSING AFFORDABILITY.—The term  
6 “housing affordability” means the quantity of hous-  
7 ing that is affordable to families having incomes that  
8 do not exceed 150 percent of the median income of  
9 families in the area in which the housing is located,  
10 with adjustments for smaller and larger families.  
11 For purposes of this paragraph, area, median family  
12 income for an area, and adjustments for family size  
13 shall be determined in the same manner as such fac-  
14 tors are determined for purposes of section 3(b)(2)  
15 of the United States Housing Act of 1937.

16 (2) AGENCY.—The term “agency” means each  
17 authority of the Government of the United States,  
18 whether or not it is within or subject to review by  
19 another agency, but does not include—

20 (A) the Congress;

21 (B) the courts of the United States;

22 (C) the governments of the territories or  
23 possessions of the United States;

24 (D) the government of the District of Co-  
25 lumbia;

1           (E) agencies composed of representatives  
2           of the parties or of representatives of organiza-  
3           tions of the parties to the disputes determined  
4           by them;

5           (F) courts-martial and military commis-  
6           sions;

7           (G) military authority exercised in the field  
8           in time of war or in occupied territory; or

9           (H) functions conferred by—

10           (i) sections 1738, 1739, 1743, and  
11           1744 of title 12, United States Code;

12           (ii) chapter 2 of title 41, United  
13           States Code;

14           (iii) subchapter II of chapter 471 of  
15           title 49, United States Code; or

16           (iv) sections 1884, 1891–1902, and  
17           former section 1641(b)(2), of title 50, ap-  
18           pendix, United States Code.

19           (3) FAMILIES.—The term “families” has the  
20           meaning given such term in section 3 of the United  
21           States Housing Act of 1937.

22           (4) RULE.—The term “rule” means any rule  
23           for which the agency publishes a general notice of  
24           proposed rulemaking pursuant to section 553(b) of  
25           title 5, United States Code, or any other law, includ-

1       ing any rule of general applicability governing grants  
2       by an agency to State and local governments for  
3       which the agency provides an opportunity for notice  
4       and public comment; except that such term does not  
5       include a rule of particular applicability relating to  
6       rates, wages, corporate or financial structures or re-  
7       organizations thereof, prices, facilities, appliances,  
8       services, or allowances therefor or to valuations,  
9       costs or accounting, or practices relating to such  
10      rates, wages, structures, prices, appliances, services,  
11      or allowances.

12           (5) SIGNIFICANT.—The term “significant”  
13      means increasing consumers’ cost of housing by  
14      more than \$100,000,000 per year.

15      (k) DEVELOPMENT.—Not later than 1 year after the  
16      date of the enactment of this Act, the Secretary of Hous-  
17      ing and Urban Development shall develop model initial  
18      and final housing impact analyses under this section and  
19      shall cause such model analyses to be published in the  
20      Federal Register. The model analyses shall define the pri-  
21      mary elements of a housing impact analysis to instruct  
22      other agencies on how to carry out and develop the anal-  
23      yses required under subsections (d) and (e).

24      (l) JUDICIAL REVIEW.—

1           (1) DETERMINATION BY AGENCY.—Except as  
2 otherwise provided in paragraph (2), any determina-  
3 tion by an agency concerning the applicability of any  
4 of the provisions of this Act to any action of the  
5 agency shall not be subject to judicial review.

6           (2) OTHER ACTIONS BY AGENCY.—Any housing  
7 impact analysis prepared under subsection (d) or (e)  
8 and the compliance or noncompliance of the agency  
9 with the provisions of this Act shall not be subject  
10 to judicial review. When an action for judicial review  
11 of a rule is instituted, any housing impact analysis  
12 for such rule shall constitute part of the whole  
13 record of agency action in connection with the re-  
14 view.

15          (3) EXCEPTION.—Nothing in this subsection  
16 bars judicial review of any other impact statement or  
17 similar analysis required by any other law if judicial  
18 review of such statement or analysis is otherwise  
19 provided by law.

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