

111TH CONGRESS
1ST SESSION

H. R. 2108

To protect home buyers from predatory lending practices.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2009

Ms. FUDGE 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 person may, in connection
4 with a subprime federally mortgage related loan, provide
5 mortgage lending services or mortgage brokerage services
6 unless such person is, at the time of the provision of such
7 services, certified by the Secretary pursuant to this section
8 as having been adequately trained with regard to subprime
9 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. The Secretary shall,
16 by regulation, define the term ‘predatory lend-
17 ing’ for purposes of this subsection.

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

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

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

1 “(2) provide for suspension or revocation in
2 such instances as the Secretary determines appro-
3 priate, which shall include an agency determination
4 or a judgment by a court of competent jurisdiction
5 that a certified individual has engaged in an act or
6 practice that is unfair or deceptive under section 5
7 of the Predatory Mortgage Lending Practices Re-
8 duction Act.

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

17 “(e) INFORMATION AND TRAINING.—

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

1 “(2) CONTRACTS.—The Secretary may enter
2 into such agreements and contracts as the Secretary
3 considers necessary to make information and train-
4 ing under this subsection available.

5 “(3) AUTHORIZATION OF APPROPRIATIONS.—
6 For providing information and training under this
7 subsection, there are authorized to be appropriated
8 to the Secretary \$2,000,000 for each of fiscal years
9 2009 and 2010.

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

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

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

24 “(3) PRIME LENDING RATE.—The term ‘prime
25 lending rate’ means, with respect to a lender, the

1 lowest interest rate charged by such lender to its
2 most creditworthy customers.

3 “(4) SUBPRIME.—

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

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

21 “(i) higher loan fees or penalties;

22 “(ii) higher interest rates;

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

24 “(iv) a history of loan delinquency;

25 “(v) higher loan-to-value ratios;

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

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

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

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

20 “(m) BEST PRACTICES PLAN.—

21 “(1) IN GENERAL.—Any creditor who extends
 22 credit in connection with a mortgage referred to in
 23 section 103(aa) shall establish and maintain a best
 24 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—

20 “(1) shall make a good faith effort to resolve
21 any consumer complaint concerning improper or
22 questionable lending practices with respect to a
23 mortgage referred to in section 103(aa) before the
24 end of the 60-day period beginning on the date the

1 complaint is received by the creditor, agent or as-
2 signee; and

3 “(2) may take no action, directly or indirectly,
4 including seeking any remedy in law or equity, to
5 collect the amount of any mortgage referred to in
6 paragraph (1), or any part of such amount, or oth-
7 erwise enforce the mortgage against the consumer or
8 the property securing the mortgage, during such 60-
9 day period (and any time limit for bringing an ac-
10 tion to collect any such amount shall toll during
11 such period and any civil action filed before the be-
12 ginning of such period in any court shall be sus-
13 pended during such period).

14 “(o) PROHIBITION ON CHARGES NOT PREVIOUSLY
15 DISCLOSED.—A creditor, or an agent or assignee of a
16 creditor, may not impose any charge or fee, or attempt
17 to collect any charge or fee, in connection with a mortgage
18 referred to in section 103(aa) that was not disclosed be-
19 fore the mortgage was executed, or impose or attempt to
20 collect any charge or fee that was so disclosed in an
21 amount in excess of the amount disclosed, unless the cred-
22 itor or assignee establishes, in accordance with regulations
23 which the Board shall prescribe, that the charge or fee
24 is reasonable and could not have reasonably been foreseen
25 at the time the mortgage was executed.

1 “(p) PLAIN DESCRIPTION AND DISCLOSURE RE-
2 QUIREMENT.—

3 “(1) CHARGES AND FEES.—Notwithstanding
4 any other provision of this title, all disclosures of
5 charges and fees required under this title with re-
6 gard to a mortgage referred to in section 103(aa),
7 shall be separately enumerated and clearly labeled,
8 stated, and described, including charges described in
9 clause (ii) or (iii) of section 128(a)(2)(A).

10 “(2) RESCISSION AND OTHER RIGHTS.—The
11 disclosure required under the penultimate sentence
12 of section 125(a) in connection with a mortgage re-
13 ferred to in section 103(aa), together with a sum-
14 mary of the consumer’s rights, shall be provided to
15 the consumer in clear and plain language not less
16 than 24 hours before the mortgage is executed.”.

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

18 (a) PROHIBITION.—It shall be unlawful, in providing
19 any mortgage lending services for a subprime federally re-
20 lated mortgage loan or any mortgage brokerage services
21 for such a loan, to engage in any unfair or deceptive act
22 or practice, which shall include, in the case of any ap-
23 praisal of a property offered as security for repayment of
24 the loan that is conducted in connection with such loan—

1 (1) directly or indirectly, compensating, coercing,
2 ing, or intimidating a person conducting or involved
3 in an appraisal, or attempting, directly or indirectly,
4 to compensate, coerce, or intimidate such a person,
5 for the purpose of causing the appraised value assigned
6 under the appraisal to the property to be
7 based on any factor other than the independent
8 judgment of the appraiser; and

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

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

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

21 (2) regulations defining with specificity acts or
22 practices which are unfair or deceptive in the provision
23 of mortgage lending services for a subprime federally
24 related mortgage loan or mortgage brokerage

1 services for such a loan, within the meaning of sub-
2 section (a).

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

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

14 (e) PENALTIES.—

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

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

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

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

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

10 **“TITLE X—DISPUTE**
11 **RESOLUTION**

12 **“SEC. 1001. SHORT TITLE.**

13 “This title may be cited as the ‘Consumer Fairness
14 Act’.

15 **“SEC. 1002. DEFINITIONS.**

16 “For purposes of this title, the following definitions
17 shall apply:

18 “(1) CONSUMER.—The term ‘consumer’ means
19 any individual.

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

1 any consumer credit transaction that is secured by
2 the consumer's principal dwelling.

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

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

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

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

23 “(c) COORDINATION WITH OTHER LAW.—No provi-
24 sion of this section shall be construed as annulling, alter-
25 ing, affecting, or superseding any Federal law, or the laws

1 of any State, relating to arbitration in connection with
 2 consumer transactions or consumer contracts, except to
 3 the extent that those laws are inconsistent with the provi-
 4 sions of this section, and then only to the extent of the
 5 inconsistency.”.

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

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

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

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

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

1 rowers, and community groups regarding illegal and inap-
 2 propriate practices, methods, practices, and terms of pred-
 3 atory lending.

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

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

12 “(d) AUTHORIZATION OF APPROPRIATIONS.—There
 13 is authorized to be appropriated to the Fund for grants
 14 under this section \$2,000,000 for each of fiscal years 2009
 15 and 2010.”.

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

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

○