

103^D CONGRESS
1ST SESSION

H. R. 2075

To require truth in disclosures for financial intermediaries, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 11, 1993

Mr. SLATTERY introduced the following bill; which was referred jointly to the Committees on Energy and Commerce and Banking, Finance and Urban Affairs

A BILL

To require truth in disclosures for financial intermediaries,
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 “Truth in Disclosure
5 Act”.

6 **SEC. 2. FINDINGS AND PURPOSE.**

7 (a) FINDINGS.—The Congress hereby finds that eco-
8 nomic stability would be enhanced, competition between
9 financial intermediaries would be improved, and the ability
10 of the consumer to make informed decisions regarding in-

1 vestment accounts, and to verify accounts, would be
2 strengthened if there was uniformity in the disclosure of
3 terms and conditions on which earnings are paid and fees
4 are assessed in connection with such accounts.

5 (b) PURPOSE.—It is the purpose of this Act to re-
6 quire the clear and uniform disclosure of—

7 (1) the rates of earnings which are payable on
8 investment accounts by financial intermediaries; and

9 (2) the fees that are assessable against invest-
10 ment accounts, so that consumers can make a mean-
11 ingful comparison between the competing claims of
12 financial intermediaries with regard to investment
13 accounts.

14 **SEC. 3. DISCLOSURE OF EARNINGS AND TERMS OF AC-**
15 **COUNTS.**

16 (a) IN GENERAL.—Except as provided in subsection
17 (b), each advertisement, announcement, or solicitation ini-
18 tiated by any financial intermediary relating to any invest-
19 ment account offered which includes any reference to a
20 specific rate payable on amounts invested in such account,
21 or to a specific yield or rate of earnings on amounts so
22 invested, shall state the following information, to the ex-
23 tent applicable, in a clear and conspicuous manner:

24 (1) The annual percentage yield based on earn-
25 ings for the latest 7-day period.

1 (2) The period during which such annual per-
2 centage yield is in effect.

3 (3) All minimum account balance and time re-
4 quirements which must be met in order to earn the
5 advertised yield (and, in the case of accounts for
6 which more than 1 yield is stated, each annual per-
7 centage yield and the account minimum balance re-
8 quirement associated with each such yield shall be in
9 close proximity and have equal prominence).

10 (4) The minimum amount of the initial deposit
11 which is required to open the account in order to ob-
12 tain the yield advertised, if such minimum amount
13 is greater than the minimum balance necessary to
14 earn the advertised yield.

15 (5) A statement that regular fees or other con-
16 ditions could reduce the yield.

17 (6) A statement if a penalty is required for
18 early withdrawal or redemption.

19 (b) BROADCAST AND ELECTRONIC MEDIA AND OUT-
20 DOOR ADVERTISING EXCEPTION.—The appropriate Fed-
21 eral agency may, by regulation, exempt advertisements,
22 announcements, or solicitations made by any broadcast or
23 electronic medium or outdoor advertising display not on
24 the premises of the financial intermediary from any disclo-
25 sure requirements described in paragraph (4) or (5) of

1 subsection (a) if the agency finds that any such disclosure
2 would be unnecessarily burdensome.

3 (c) MISLEADING DESCRIPTIONS.—

4 (1) No advertisement, announcement, or solici-
5 tation made by any financial intermediary may refer
6 to or describe an account as a free or no-cost ac-
7 count (or words of similar meaning) if—

8 (A) in order to avoid fees or service
9 charges for any period—

10 (i) a minimum balance must be main-
11 tained in the account during such period;

12 (ii) the number of transactions during
13 such period may not exceed a maximum
14 number; or

15 (iii) a dollar amount limitation is im-
16 posed on any type of withdrawal; or

17 (B) any regular service or transaction fee
18 is imposed.

19 (2) Financial intermediaries shall state in a
20 clear and conspicuous manner in any advertisement,
21 announcement, or solicitation relating to an invest-
22 ment account that such investment is not insured by
23 the Federal Government.

24 (3) Financial intermediaries shall state in a
25 large, bold, and conspicuous manner in any adver-

1 tisement, announcement, or solicitation relating to
2 an investment account mentioning historical returns
3 the following: “These returns are not to be expected
4 on your investment.”.

5 (d) MISLEADING OR INACCURATE ADVERTISEMENTS,
6 ETC., PROHIBITED.—No financial intermediaries shall
7 make any advertisement, announcement, or solicitation re-
8 lating to an investment account that is inaccurate or mis-
9 leading or that misrepresents its terms and conditions con-
10 tract.

11 **SEC. 4. ACCOUNT DISCLOSURE.**

12 (a) IN GENERAL.—Each financial intermediary shall
13 maintain a schedule of fees, charges, interest rates, and
14 terms and conditions applicable to all products offered by
15 or through the financial intermediaries, in accordance with
16 the requirements of this section and regulations which
17 shall be prescribed. A Federal agency shall specify, in reg-
18 ulations, which fees, charges, penalties, terms, conditions,
19 and account restrictions must be included in a disclosure
20 required under this subsection. A financial intermediary
21 need not include in such disclosure any information not
22 specified in such regulation.

23 (b) INFORMATION ON FEES AND CHARGES.—The
24 disclosure required under subsection (a) with respect to
25 any account shall contain the following information:

1 (1) A description of all fees, periodic service
2 charges, and penalties which may be charged or as-
3 sessed against the account (or against the account
4 holder in connection with such account), the amount
5 of any such fees, charge, or penalty (or the method
6 by which such amount will be calculated), and the
7 conditions under which any such amount will be as-
8 sessed.

9 (2) All minimum balance requirements that af-
10 fect fees, charges, and penalties, including a clear
11 description of how each such minimum balance is
12 calculated.

13 (3) Any minimum amount required with respect
14 to the initial investment in order to open the ac-
15 count.

16 (c) INFORMATION ON EARNINGS.—The disclosure re-
17 quired under subsection (a) with respect to any account
18 shall include the following information:

19 (1) The annual percentage yield for the opened
20 account based on earnings for the latest 7-day pe-
21 riod.

22 (2) The period during which any such annual
23 percentage yield will be in effect.

24 (3) Any annual rate of simple interest.

1 (4) The frequency with which earnings will be
2 compounded and credited.

3 (5) A clear description of the method used to
4 determine the balance on which earnings are paid.

5 (6) The information described in paragraphs
6 (1) through (4) with respect to any period after the
7 end of the period referred to in paragraph (2) (or
8 the method for computing any information described
9 in any such paragraph), if applicable.

10 (7) Any minimum balance which must be main-
11 tained to earn the rates and obtain the yields dis-
12 closed pursuant to this subsection and a clear de-
13 scription of how any such minimum balance is cal-
14 culated.

15 (8) A clear description of any minimum time
16 requirement which must be met in order to obtain
17 the yields disclosed pursuant to this subsection and
18 any information described in paragraph (1), (2), (3),
19 or (4) that will apply if any time requirement is not
20 met.

21 (9) A statement, if applicable, that any earn-
22 ings which have accrued but has not been credited
23 to an account at the time of a withdrawal from the
24 account will not be paid by the financial

1 intermediary or credited to the account by reason of
2 such withdrawal.

3 (10) Any provision or requirement relating to
4 nonpayment of earnings, including any charge or
5 penalty for early withdrawal, and the conditions
6 under which any such charge or penalty may be as-
7 sessed.

8 (d) OTHER INFORMATION.—The disclosure required
9 under subsection (a) shall include such other disclosures
10 as the Federal agency may determine to be necessary to
11 allow consumers to understand and compare accounts, in-
12 cluding frequency of earnings adjustments, account re-
13 strictions, and renewal policies.

14 (e) STYLE AND FORMAT.—Disclosures required
15 under subsection (a) shall be written in clear and plain
16 language and be presented in a format designed to allow
17 consumers to readily understand the terms of the accounts
18 offered.

19 **SEC. 5. DISCLOSURE REQUIREMENTS FOR CERTAIN AC-**
20 **COUNTS.**

21 The Federal agency shall require, in regulations, such
22 modification in the disclosure requirements under this Act
23 as may be necessary to carry out the purposes of this Act
24 in the case of—

1 (1) accounts with respect to which determina-
2 tion of annual percentage yield is based on an an-
3 nual rate of interest that is guaranteed for a period
4 of less than 1 year;

5 (2) variable rate accounts;

6 (3) accounts which, pursuant to law, do not
7 guarantee payment of a stated rate;

8 (4) multiple rate accounts; and

9 (5) accounts with respect to which determina-
10 tion of annual percentage yield is based on an an-
11 nual effective rate of interest that is guaranteed for
12 a stated term.

13 **SEC. 6. DISTRIBUTION OF SCHEDULES.**

14 (a) IN GENERAL.—A disclosure required account
15 shall be—

16 (1) made available to any person upon request;

17 (2) provided to any potential customer before
18 an account is opened or a service is rendered; and

19 (3) provided to the consumer, in the case of any
20 time account which is renewable at maturity without
21 notice from the consumer, at least 30 days before
22 the date of maturity.

23 (b) DISTRIBUTION IN CASE OF CERTAIN INITIAL IN-
24 VESTMENTS.—If a consumer is not physically present at
25 an office of a financial intermediary at the time an initial

1 investment is accepted with respect to an account estab-
2 lished by or for such person, the financial intermediary
3 shall mail the disclosure to the customer at the address
4 shown on the records of the financial intermediary for
5 such account no later than 10 business days after the date
6 of the initial investment.

7 (c) DISTRIBUTION OF NOTICE OF CERTAIN
8 CHANGES.—If—

9 (1) any change is made in term or condition
10 which is required to be disclosed; and

11 (2) the change may reduce the yield or ad-
12 versely affect any holder of the account,

13 all account holders who may be affected by such change
14 shall be notified and provided with a description of the
15 change by mail at least 30 days before the change takes
16 effect.

17 (d) DISTRIBUTION IN CASE OF ACCOUNTS ESTAB-
18 LISHED BY MORE THAN 1 INDIVIDUAL OR BY A GROUP.—

19 If an account is established by more than 1 individual or
20 for a person other than an individual, any distribution de-
21 scribed in this section with respect to such account meets
22 the requirements of this section if the distribution is made
23 to 1 of the individuals who established the account or 1
24 individual representative of the person on whose behalf
25 such account was established.

1 (e) NOTICE TO INVESTORS AS OF THE EFFECTIVE
2 DATE OF REGULATIONS.—For any account for which the
3 financial intermediary delivers an account statement on a
4 quarterly or more frequent basis, the financial
5 intermediary shall include on the first of any regularly
6 scheduled mailing posted or delivered after publication of
7 regulations issued in final form, a statement that the in-
8 vestor has the right to request an account disclosure con-
9 tinuing the terms, charges, and interest rates of the ac-
10 count, and that the account holder may wish to request
11 such an account disclosure.

12 **SEC. 7. PAYMENT OF INTEREST.**

13 (a) CALCULATED ON FULL AMOUNT OF PRIN-
14 CIPAL.—Earnings on an interest-earning account at any
15 financial intermediary shall be calculated on the full
16 amount of principal in the account for each day of the
17 stated calculation period at the rate or rates of interest
18 disclosed pursuant to this Act.

19 (b) NO PARTICULAR METHOD OF COMPOUNDING IN-
20 TEREST REQUIRED.—Subsection (a) shall not be con-
21 strued as prohibiting or requiring the use of any particular
22 method of compounding or crediting of interest.

23 (c) DATE BY WHICH INTEREST MUST ACCRUE.—In-
24 terest on accounts that are subject to this Act shall begin

1 to accrue not later than the business day provisional credit
2 is received.

3 **SEC. 8. PERIODIC STATEMENTS.**

4 Each financial intermediary shall include on or with
5 each period statement provided to each investor a clear
6 and conspicuous disclosure of the following information
7 with respect to such account:

8 (1) The annual percentage yield earned.

9 (2) The amount of earnings.

10 (3) The amount of any fees or charges imposed.

11 (4) The number of days in the reporting period.

12 **SEC. 9. REGULATIONS.**

13 (a) IN GENERAL.—

14 (1) REGULATIONS REQUIRED.—Before the end
15 of the 9-month period beginning on the date of the
16 enactment of this Act, the Federal agency shall pre-
17 scribe regulations to carry out the purpose and pro-
18 visions of this Act.

19 (2) EFFECTIVE DATE OF REGULATIONS.—The
20 regulation prescribed under paragraph (1) shall take
21 effect not later than 6 months after publication in
22 final form.

23 (3) CONTENTS OF REGULATIONS.—The regula-
24 tions prescribed under paragraph (1) may contain
25 such classifications, differentiations, or other provi-

1 sions, and may provide for such adjustments and ex-
2 ceptions for any class of accounts as, in the judg-
3 ment of the Federal agency are necessary or proper
4 to carry out the purposes of this Act, to prevent cir-
5 cumvention or evasion of the requirements of this
6 Act, or to facilitate compliance with the require-
7 ments of this Act.

8 (b) MODEL FORMS AND CLAUSES.—

9 (1) IN GENERAL.—The Federal agency shall
10 publish model forms and clauses for common disclo-
11 sures to facilitate compliance with this Act. In devis-
12 ing such forms, the agency shall consider the use by
13 financial intermediaries of data processing or similar
14 automated machines.

15 (2) USE OF FORMS AND CLAUSES DEEMED IN
16 COMPLIANCE.—Nothing in this Act may be con-
17 strued to require a financial intermediary to use any
18 such model form or clause prescribed by the agency
19 under this subsection. A financial intermediary shall
20 be deemed to be in compliance with the disclosure
21 provisions of this Act if the financial intermediary—

22 (A) uses any appropriate model form or
23 clause as published by the agency; or

24 (B) uses any such model form or clause
25 and changes it by—

1 (i) deleting any information which is
2 not required by this Act; or

3 (ii) rearranging the format, if in mak-
4 ing such deletion or rearranging the for-
5 mat, the financial intermediary does not
6 affect the substance, clarity, or meaningful
7 sequence of the disclosure.

8 **SEC. 10. ADMINISTRATIVE ENFORCEMENT.**

9 (a) IN GENERAL.—Compliance with the requirements
10 imposed under this Act shall be enforced under [identify
11 agencies].

12 (b) REGULATIONS BY OTHER AGENCIES.—The au-
13 thority of the Federal agency to issue regulations under
14 this Act does not impair the authority of any other Fed-
15 eral agency referred to, to make rules regarding its own
16 procedures in enforcing compliance with the requirements
17 imposed under this Act.

18 **SEC. 11. LIABILITY.**

19 (a) LIABILITY.—Except as otherwise provided in this
20 section, any financial intermediaries which fails to comply
21 with any requirement imposed under this Act or any regu-
22 lation prescribed under this Act with respect to any person
23 who is an investor is liable to such person in an amount
24 equal to the sum of—

1 (1) any actual damage sustained by such person
2 as a result of the failure;

3 (2)(A) in the case of an individual action, such
4 additional amount as the court may allow, except
5 that the liability under this subparagraph shall not
6 be less than \$1,000; or

7 (B) in the case of a class action, such amount
8 as the court may allow, except that—

9 (i) as to each member of the class, no min-
10 imum recovery shall be applicable; and

11 (ii) the total recovery under this subpara-
12 graph in any class action or series of class ac-
13 tions arising out of the same failure to comply
14 by the same financial intermediary shall not be
15 less than \$500,000; and

16 (3) in the case of any successful action to en-
17 force any liability under paragraph (1) or (2), the
18 costs of the action, together with a reasonable attor-
19 ney's fee as determined by the court.

20 (b) CLASS ACTION AWARDS.—In determining the
21 amount of any award in any class action, the court shall
22 consider, among other relevant factors—

23 (1) the amount of any actual damages awarded;

24 (2) the frequency and persistence of failures of
25 compliance;

1 (3) the resources of the financial intermediary;

2 (4) the number of persons adversely affected;

3 and

4 (5) the extent to which the failure of compli-
5 ance was intentional.

6 (c) BONA FIDE ERRORS.—

7 (1) GENERAL RULE.—A financial intermediary
8 may not be held liable in any action brought under
9 this section for a violation of this Act if the financial
10 intermediary demonstrates by a preponderance of
11 the evidence that the violation was not intentional
12 and resulted from a bona fide error notwithstanding
13 the maintenance of procedures reasonably adapted
14 to avoid any such error.

15 (2) EXAMPLES.—Examples of a bona fide error
16 include clerical, calculation, computer malfunction
17 and programming, and printing errors, except that
18 an error of legal judgment with respect to a finan-
19 cial intermediary's obligation under this Act is not
20 a bond fide error.

21 (d) NO LIABILITY FOR OVERPAYMENT.—A financial
22 intermediary may not be held liable in any action under
23 this section for a violation of this Act if the violation has
24 resulted in—

1 (1) earnings paid to the investor in an amount
2 greater than the amount determined under any dis-
3 closure applicable with respect to such payment; or

4 (2) a charge to the investor in an amount less
5 than the amount determined under the disclosed
6 charge or fee schedule applicable with respect to
7 such charge.

8 (e) JURISDICTION.—Any action under this section
9 may be brought in any United States district court, or
10 in any other court of competent jurisdiction, within 1 year
11 after the date of the occurrence of the violation involved.

12 (f) RELIANCE ON FEDERAL AGENCY RULINGS.—No
13 provision of this section imposing any liability shall apply
14 to any act done or omitted in good faith in conformity
15 with any regulation or order, or any interpretation of any
16 regulation or order, of the agency, or in conformity with
17 any interpretation or approval by an official or employee
18 of the agency duly authorized by the agency to issue such
19 interpretation or approval under procedures prescribed by
20 the agency, notwithstanding, the fact that after such act
21 or omission has occurred, such regulation, order, interpre-
22 tation, or approval is amended, rescinded, or determined
23 by judicial or other authority to be invalid for any reason.

24 (g) NOTIFICATION OF AND ADJUSTMENT FOR ER-
25 RORS.—A financial intermediary shall not be liable under

1 this section for any failure to comply with any requirement
2 imposed under this Act with respect to any account if—

3 (1) before—

4 (A) the end of the 60-day period beginning
5 on the date on which the financial intermediary
6 discovered the failure to comply;

7 (B) any action is instituted against the fi-
8 nancial intermediary by the investor under this
9 section with respect to such failure to comply;
10 and

11 (C) any written notice of such failure to
12 comply is received by the financial intermediary
13 from the investor, the financial intermediary
14 notifies the investor of the failure of such finan-
15 cial intermediary to comply with such require-
16 ment; and

17 (2) the financial intermediary makes such ad-
18 justments as may be necessary with respect to such
19 account to ensure that—

20 (A) the investor will not be liable for any
21 amount in excess of the amount actually dis-
22 closed with respect to any fee or charge;

23 (B) the investor will not be liable for any
24 fee or charge imposed under any condition not
25 actually disclosed; and

1 (C) earnings on amounts in such account
2 will accrue at the annual percentage yield, and
3 under the conditions, actually disclosed (and
4 credit will be provided for earnings already ac-
5 crued at a different annual percentage yield and
6 under different conditions than the yield or con-
7 ditions disclosed).

8 (h) MULTIPLE INTERESTS IN 1 ACCOUNT.—If more
9 than 1 person holds an interest in any account—

10 (1) the minimum and maximum amounts of li-
11 ability under subsection (a)(2)(A) for any failure to
12 comply with the requirements of this Act shall apply
13 with respect to such account; and

14 (2) the court shall determine the manner in
15 which the amount of any such liability with respect
16 to such account shall be distributed among such per-
17 sons.

18 (i) CONTINUING FAILURE TO DISCLOSE.—

19 (1) CERTAIN CONTINUING FAILURES TREATED
20 AS 1 VIOLATION.—Except as provided in paragraph
21 (2), the continuing failure of any financial
22 intermediary to disclose any particular term required
23 to be disclosed under this Act with respect to a par-
24 ticular account shall be treated as a single violation
25 for purposes of determining the amount of any li-

1 ability under subsection (a) for such failure to dis-
2 close.

3 (2) SUBSEQUENT FAILURE TO DISCLOSE.—The
4 continuing failure of any depository institution to
5 disclose any particular term required to be disclosed
6 under this Act with respect to a particular term re-
7 quired to be disclosed under this Act with respect to
8 a particular account after judgment has been ren-
9 dered in favor of the investor in connection with a
10 prior failure to disclose such term with respect to
11 such account shall be treated as a subsequent viola-
12 tion for purposes of determining liability under sub-
13 section (a).

14 **SEC. 12. DEFINITIONS.**

15 For purposes of this Act:

16 (1) ACCOUNT.—The term “account” means any
17 account offered to any person.

18 (2) INVESTOR.—The term “investor” means
19 any person.

20 (3) FINANCIAL INTERMEDIARY.—The term “fi-
21 nancial intermediary” excludes those identified in
22 clauses (i) through (vi) of section 19(b)(1)(A) of the
23 Federal Reserve Act.

24 (4) FEDERAL AGENCY.—**【To be supplied.】**



HR 2075 IH——2