

108TH CONGRESS  
1ST SESSION

# H. R. 1663

To protect home buyers from predatory lending practices.

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## IN THE HOUSE OF REPRESENTATIVES

APRIL 8, 2003

Mrs. JONES of Ohio (for herself, Ms. NORTON, Mr. CUMMINGS, Mr. CLAY, Mr. PAYNE, Mrs. CHRISTENSEN, Ms. MILLENDER-McDONALD, Mr. DAVIS of Illinois, Mr. TOWNS, Mr. JACKSON of Illinois, Mr. FATTAH, Mr. CLYBURN, Ms. LEE, Ms. KILPATRICK, Mr. GUTIERREZ, Ms. KAPTUR, Ms. SCHAKOWSKY, Mr. SANDERS, Ms. BERKLEY, Mr. RYAN of Ohio, Mr. JEFFERSON, Mr. LEWIS of Georgia, Mr. CONYERS, and Ms. JACKSON-LEE of Texas) 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.

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”.

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

3 (a) IN GENERAL.—The Real Estate Settlement Pro-  
4 cedures Act of 1974 is amended by inserting after section  
5 12 (12 U.S.C. 2610) the following new section:

6 **“SEC. 13. CERTIFICATION REQUIREMENTS FOR MORTGAGE**  
7 **LENDERS AND BROKERS.**

8 “(a) REQUIREMENT.—No individual may, in connec-  
9 tion with a subprime federally mortgage related loan, pro-  
10 vide mortgage lending services or mortgage brokerage  
11 services unless such person is, at the time of the provision  
12 of such services, certified by the Secretary pursuant to this  
13 section as having been adequately trained with regard to  
14 subprime lending.

15 “(b) STANDARDS AND EXAMINATION.—

16 “(1) IN GENERAL.—The Secretary shall, by  
17 regulation, establish requirements, standards, and  
18 procedures for testing and certifying persons pro-  
19 viding mortgage lending services or mortgage bro-  
20 kerage services in connection with a subprime, feder-  
21 ally related mortgage loans.

22 “(2) EXAMINATION.—Such standards and pro-  
23 cedures shall require, for certification under this sec-  
24 tion, that the individual shall demonstrate, by writ-  
25 ten examination, knowledge regarding the following  
26 areas:

1           “(A) FEDERAL LAW.—The requirements  
2           and limitations under Federal laws regarding  
3           mortgage lending, including the Truth in Lend-  
4           ing Act, the Fair Credit Reporting Act, the  
5           Equal Credit Opportunity Act, the Real Estate  
6           Settlement Procedures Act of 1974, the Home  
7           Ownership and Equity Protection Act of 1994,  
8           the Home Mortgage Disclosure Act of 1975,  
9           and the Fair Housing Act.

10           “(B) SUBPRIME LENDING.—Legal and ap-  
11           propriate practices, methods, conventions, and  
12           terms of subprime lending in all lending func-  
13           tions, including advertising and marketing, con-  
14           sumer education and counseling, origination,  
15           underwriting, closing, servicing, information  
16           technology, and internal control policies and  
17           procedures.

18           “(C) PREDATORY LENDING.—Illegal and  
19           inappropriate practices, methods, practices, and  
20           terms of predatory lending.

21           “(D) LAW REGARDING COMPETENCY TO  
22           CONTRACT.—Basic contract law regarding com-  
23           petency and incapacity to contract.

1       “(c) DECERTIFICATION.—The Secretary shall estab-  
2       lish standards and procedures for suspension and revoca-  
3       tion of the certification under this section, which shall—

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

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

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

22       “(e) INFORMATION AND TRAINING.—

23               “(1) IN GENERAL.—The Secretary shall make  
24       available, for persons engaged in providing mortgage  
25       lending services and mortgage brokerage services, in-

1       formation and training in the areas described in sub-  
2       section (b)(2). Such information and training shall  
3       be made available through classes, written materials,  
4       and the World Wide Web.

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

9               “(3) AUTHORIZATION OF APPROPRIATIONS.—  
10       For providing information and training under this  
11       subsection, there are authorized to be appropriated  
12       to the Secretary \$1,000,000 for each of fiscal years  
13       2004 and 2005.

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

16              “(1) MORTGAGE BROKERAGE SERVICES.—The  
17       term ‘mortgage brokerage services’ means the bring-  
18       ing together of a borrower and lender to obtain a  
19       federally related mortgage loan and the rendering of  
20       settlement services, by an individual who is not an  
21       employee or exclusive agent of a lender.

22              “(2) MORTGAGE LENDING SERVICES.—The  
23       term ‘mortgage lending services’ means services re-  
24       lating to the origination of a federally related mort-  
25       gage loan, including the taking of loan applications,

1 loan processing, and the underwriting and funding  
2 of a loan.

3 “(3) PRIME LENDING RATE.—The term ‘prime  
4 lending rate’ means, in connection with a federally  
5 related mortgage loan, an annual percentage rate  
6 that does not exceed by more than 8 percentage  
7 points the yield on Treasury securities having com-  
8 parable periods of maturity on the fifteenth day of  
9 the month immediately preceding the month in  
10 which the loan is made.

11 “(4) SUBPRIME.—

12 “(A) IN GENERAL.—The term ‘subprime’  
13 means, with respect to a federally related mort-  
14 gage loan, that the borrower under the loan, or  
15 the loan terms, exhibit characteristics that indi-  
16 cate that the loan is subject to a significantly  
17 higher risk of default than federally related  
18 mortgage loans made to borrowers at prime  
19 lending rates.

20 “(B) REGULATIONS.—The Secretary shall  
21 prescribe regulations to carry out this para-  
22 graph, which shall specify characteristics re-  
23 ferred to in subparagraph (A) that indicate a  
24 higher risk of default and shall establish cri-  
25 teria based on such characteristics for deter-

1           mining whether a federally related mortgage  
2           loan is a subprime loan. Such characteristics  
3           shall include—

4                           “(i) higher loan fees or penalties;

5                           “(ii) higher interest rates;

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

7                           “(iv) a history of loan delinquency;

8                           “(v) higher loan-to-value ratios;

9                           “(vi) lower credit scores or other cred-  
10                          it ratings;

11                          “(vii) more recent declaration of  
12                          bankruptcy;

13                          “(viii) lack of a credit history; and

14                          “(ix) any other factors that the Sec-  
15                          retary considers appropriate.”.

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

1 **SEC. 3. LENDER REQUIREMENTS FOR HIGH COST MORT-**  
2 **GAGES.**

3 Section 129 of the Truth in Lending Act (15 U.S.C.  
4 1639) is amended by adding at the end the following new  
5 subsections:

6 “(m) **BEST PRACTICES PLAN.**—

7 “(1) **IN GENERAL.**—Any creditor who extends  
8 credit in connection with a mortgage referred to in  
9 section 103(aa) shall establish and maintain a best  
10 practices plan, in accordance with regulations which  
11 the Board shall prescribe, to ensure compliance with  
12 the requirements of this title.

13 “(2) **REQUIREMENTS.**—The best practices plan  
14 established under paragraph (1) by any creditor  
15 shall require the creditor, and any subcontractor or  
16 agent of the creditor to—

17 “(A) provide all employees of the creditor,  
18 subcontractor, or agent who are involved in any  
19 aspect of an extension of credit in connection  
20 with a mortgage referred to in section 103(aa),  
21 and any subcontractor or agent of such creditor  
22 so involved, with such training in the best prac-  
23 tices plan of the creditor as the Board deter-  
24 mines by regulation to be appropriate; and

1           “(B) periodically review and evaluate the  
2           performance of such employees, contractors,  
3           and agents under the best practices plan.

4           “(n) GOOD FAITH RESOLUTION OF COMPLAINTS.—  
5           A creditor, and any agent or assignee of the creditor, shall  
6           make a good faith effort to resolve any consumer com-  
7           plaint concerning improper or questionable lending prac-  
8           tices with respect to a mortgage referred to in section  
9           103(aa) before the end of the 60-day period beginning on  
10          the date the complaint is received by the creditor, agent  
11          or assignee.

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

24          “(p) PLAIN DESCRIPTION AND DISCLOSURE RE-  
25          QUIREMENT.—

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

8           “(2) RESCISSION AND OTHER RIGHTS.—The  
9 disclosure required under the penultimate sentence  
10 of section 125(a) in connection with a mortgage re-  
11 ferred to in section 103(aa), together with a sum-  
12 mary of the consumer’s rights, shall be provided to  
13 the consumer in clear and plain language before the  
14 mortgage is executed.”.

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

16           (a) PROHIBITION.—It shall be unlawful, in providing  
17 any mortgage lending services for a subprime federally re-  
18 lated mortgage loan or any mortgage brokerage services  
19 for such a loan, to engage in any unfair or deceptive act  
20 or practice.

21           (b) RULEMAKING PROCEEDINGS.—The Secretary of  
22 Housing and Urban Development, the Board of Governors  
23 of the Federal Reserve System, and the Federal Trade  
24 Commission may jointly issue—

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

7           (2) regulations defining with specificity acts or  
8           practices which are unfair or deceptive in the provi-  
9           sion of mortgage lending services for a subprime fed-  
10          erally related mortgage loan or mortgage brokerage  
11          services for such a loan, within the meaning of sub-  
12          section (a).

13          (c) COMPLIANCE ENFORCEMENT.—Any violation of  
14 a regulation issued under subsection (b)(2) shall be treat-  
15 ed as a violation of a requirement imposed under the  
16 Truth in Lending Act and compliance with such regulation  
17 shall be enforceable under sections 108 and 130 of such  
18 Act.

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

24          (e) PENALTIES.—

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

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

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

16 **SEC. 5. PROHIBITION ON ARBITRATION CLAUSES IMPOSED**  
17 **ON CONSUMERS WITHOUT THEIR CONSENT.**

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

21                           **“TITLE X—DISPUTE**  
22                           **RESOLUTION**

23 **“SEC. 1001. SHORT TITLE.**

24          “‘This title may be cited as the ‘Consumer Fairness  
25 Act’.

1 **“SEC. 1002. DEFINITIONS.**

2 “For purposes of this title, the following definitions  
3 shall apply:

4 “(1) CONSUMER.—The term ‘consumer’ means  
5 any individual.

6 “(2) CONSUMER TRANSACTION.—The term  
7 ‘consumer transaction’ means the sale or rental of  
8 goods or services, the extension of credit, or the pro-  
9 vision of any other financial product or service, to an  
10 individual in a transaction entered into primarily for  
11 personal, family, or household purposes, including  
12 any consumer credit transaction that is secured by  
13 the consumer’s principal dwelling.

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

18 **“SEC. 1003. PROHIBITION ON ARBITRATION CLAUSES IM-  
19 POSED ON CONSUMERS WITHOUT THEIR  
20 CONSENT.**

21 “(a) IN GENERAL.—A written provision in any con-  
22 sumer transaction or consumer contract which requires  
23 binding arbitration to resolve any controversy arising out  
24 of such transaction or contract, or the refusal to perform  
25 the whole or any part of the transaction shall not be en-  
26 forceable.

1       “(b) POST-CONTROVERSY AGREEMENTS.—Sub-  
2 section (a) shall not apply with respect to a written agree-  
3 ment to determine by binding arbitration an existing con-  
4 troversy arising out of a consumer transaction or con-  
5 sumer contract if the written agreement has been entered  
6 into by the parties to the consumer transaction or con-  
7 sumer contract after the controversy has arisen.

8       “(c) COORDINATION WITH OTHER LAW.—No provi-  
9 sion of this section shall be construed as annulling, alter-  
10 ing, affecting, or superseding any Federal law, or the laws  
11 of any State, relating to arbitration in connection with  
12 consumer transactions or consumer contracts, except to  
13 the extent that those laws are inconsistent with the provi-  
14 sions of this section, and then only to the extent of the  
15 inconsistency.”.

16       (b) APPLICABILITY.—The amendments made by this  
17 section shall apply to all consumer transactions and con-  
18 sumer contracts entered into on, or after the date of the  
19 enactment of this Act and to all controversies pending or  
20 filed on, or arising after, the date of the enactment of this  
21 Act.

1 **SEC. 6. GRANTS TO COMMUNITY DEVELOPMENT CORPORA-**  
2 **TIONS FOR PREDATORY LENDING EDU-**  
3 **CATION.**

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

8 **“SEC. 122. GRANTS TO COMMUNITY DEVELOPMENT COR-**  
9 **PORATIONS FOR PREDATORY LENDING EDU-**  
10 **CATION.**

11 “(a) IN GENERAL.—To the extent amounts are made  
12 available under subsection (d), the Fund may make grants  
13 to nonprofit community development corporations to pro-  
14 vide education and training to borrowers, potential bor-  
15 rowers, and community groups regarding illegal and inap-  
16 propriate practices, methods, practices, and terms of pred-  
17 atory lending.

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

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

1       “(d) AUTHORIZATION OF APPROPRIATIONS.—There  
2 is authorized to be appropriated to the Fund for grants  
3 under this section \$1,000,000 for each of fiscal years 2004  
4 and 2005.”.

5       (b) AMENDMENT TO TABLE OF CONTENTS.—The  
6 table of contents in section 1(b) of the Riegle Community  
7 Development and Regulatory Improvement Act of 1994  
8 (12 U.S.C. 4701 note) is amended by inserting after the  
9 item relating to section 121 the following new item:

“Sec. 122. Grants to community development corporations for predatory lending education.”.

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