

108TH CONGRESS
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H. R. 730

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.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 12, 2003

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

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 con-
10 tain—

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 or
25 effect. Such rule shall not be repromulgated until a

1 final housing impact analysis has been completed by
2 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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