

111TH CONGRESS  
1ST SESSION

# H. R. 2108

To protect home buyers from predatory lending practices.

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IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2009

Ms. FUDGE 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”.

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.”.

○