

BILL

To provide for the meeting of specific minimum targets by financial institutions in lending to low and medium income level households for housing purposes and to provide for matters connected therewith.

PREAMBLE

AND WHEREAS, in terms of section 26(1) and (2) of the Constitution -

- a. everyone has the right to have access to adequate housing; and
- b. the state must take reasonable legislative and other measures, within its available resources, to achieve the progressive realisation of this right;

AND WHEREAS sections 2(1) and 3(1) of the Home Loan and Mortgage Disclosure Act, 2000 provide that every financial institution must disclose information regarding the completed home loan applications received; loan applications declined, the home loan applications closed and disbursed and the home loan applications that are approved by a financial institution;

AND WHEREAS, there is now a need to ensure that all financial institutions in the business of providing home loans should in addition to disclosing certain information as set out in the Home Loan and Mortgage Disclosure Act, 2000, contribute towards making finance available to the lower end of the home loan market;

AND WHEREAS, it is not the intention of this Act to promote, in any way, unsound business practices among financial institutions in their business of providing home loans;

BE IT THEREFORE ENACTED by the Parliament of the Republic of South Africa, as follows:

Definitions

1. In this Act, unless the context indicates otherwise -

"borrower" means any person who has already applied, is in the process of applying, or is planning to apply to a financial institution for a home loan, whether or not the application is successful;

"business strategy" refers to the document prepared annually by a financial institution and mapping out its plan to meet the specified targets and standards for the current year including the delineation of quarterly indicators and the attainment of quarterly milestones and, where these have not been met for the previous year, detail on how it intends to improve its performance;

"Department" means the Department of Housing;

"disparate impact" refers to the adverse effect on a borrower or household of any attitude, practice or policy of a financial institution (or its representatives) that it cannot reasonably justify on the basis of safe and sound business principles;

"financial institution" means any bank or mutual bank registered as such under the Banks Act, 1990 (Act No. 94 of 1990), or the Mutual Banks Act, 1993 (Act No. 124 of 1993), or any other registered institution whose business is, in full or in part, either the acceptance of deposits from the general public, the advance of credit to persons or both such acceptance and advance, with the security of a registered mortgage bond or any other form of accepted security, for the purpose of providing home loans;

"home" refers to any dwelling unit that complies with NHBRG minimum requirements (including but not limited to, extensions, renovations and improvements) that is being used or is to be used in full or in part for residential purposes;

"home loan" means a loan or advance by a financial institution to a person for purposes of constructing, purchasing, renovating or improving in any way such person's home, whether owner-occupied or rented out, with the security of a registered mortgage bond or any other form of accepted security;

"low income level" means a monthly household income in a range to be prescribed;

"medium income level" means a monthly household income in a range to be prescribed;

"Minister" means the Minister of Housing;

"NHBRG" means the National Home Builders Registration Council established under section 2 of the Housing Consumers Protection Measures Act, 1998 (Act No. 95 of 1998);

"niche market lender" refers to a financial institution for which more than half of its outstanding rand volume of home loans are to households with low or medium income levels

"Office" means the Office of Disclosure established in terms of the Home Loan and Mortgage Disclosure Act, 2000 (Act No. 63 of 2000);

"red lining" occurs when a financial institution does not offer a home loan to a borrower or household mainly on account of the house to be financed being located in a particular geographical area or neighbourhood.

"standard" refers to the performance, conduct and level of compliance that is prescribed by the Minister to a financial institution in attempting to meet its target;

"target" refers to that proportion of a financial institution's book that is prescribed by the Minister for disbursement either directly or indirectly to low and medium income level households for housing purposes.

Scope and Application

2. The provisions of this Act shall apply to all financial institutions.

Functions of the Office

3. The Office must:
 - a. outline data requirements to be furnished by financial institutions;
 - b. collate such data;
 - c. verify and authenticate such data if considered necessary;
 - d. analyse and evaluate such data;
 - e. monitor the progress of financial institutions in meeting their targets in terms of section 4(1)(h)
 - f. below and intervene where necessary to ensure compliance with the provisions of this Act;
 - g. impose punitive measures as prescribed;
 - h. provide incentives and rewards as prescribed;
 - i. report to the Minister and to the public; and
 - j. request and review a business strategy for any financial institution if this is necessary for the Office to properly carry out its functions.

Principles applicable to Community Reinvestment for Housing

4. (1) In attempting to meet the needs of low and medium income households in accessing home loan finance, financial institutions must:
 - a. refrain from refusing home loan finance to borrowers purely on the grounds of the current or future expected socio-economic characteristics of the residents in the neighbourhood in which the home is located;
 - b. refrain from the practice of redlining other than where dictated by safe and sound business principles;
 - c. afford borrowers the necessary dignity, courtesy and honesty when discussing and processing applications for mortgage loans;
 - d. communicate transparently and openly with borrowers during all stages of negotiations;
 - e. communicate clearly and openly with all borrowers on the outcome of their applications and furnish reasons in writing for rejected applications;
 - f. encourage where possible a climate of saving amongst home owners and borrowers and provide meaningful incentives to those who save;
 - g. notwithstanding any reasons that are considered acceptable by the Minister, meet or exceed the targets and standards prescribed by the Minister for lending to households with low and medium income levels; and
 - h. if they are unable to meet those targets and standards by lending directly to such end-users, opt for one or any combination of the following:
 - i. provide funding through a prescribed wholesale lender at a mutually agreed interest rate for on-lending to niche lenders to provide end user loans;
 - ii. purchase such wholesale lenders' securities and debt issues; and
 - iii. provide funding directly to niche market lenders to make available for end user loans.

(2) In attempting to meet the needs of the poor in accessing home loan finance, financial institutions must not:

- a. lend without due regard to a borrower's repayment ability;
- b. for low-income borrowers, make mortgage loans where the principal amount loaned is greater than the amount needed for housing purposes; and
- c. implement policies that lead to discrimination or have a disparate impact

(3) A financial institution must not, unless reasonably justified by business necessity:

- a. fail to provide information or services regarding the home lending process, including credit availability, application procedures or underwriting standards;
- b. discourage or selectively encourage borrowers;
- c. refuse to extend credit or use different underwriting methods;
- d. vary credit terms, including amount, interest rate, duration or type of home loan;
- e. service a home loan or invoke default remedies differently;
- f. use different standards for pooling or packaging home loans.

Reporting requirements

5. (1) Every financial institution must prepare for the Office an annual report containing information to be prescribed by regulation,
- (2) Such report must be furnished to the Office within 60 days from the end of the reporting period.

Performance and ratings

6. The Minister must, by regulations, prescribe the following:
 1. Targets and standards applicable to financial institutions in respect of community reinvestment for housing.
 2. An assessment instrument which includes the following criteria:

- a. Amount of Home Lending to Low or Medium Income Levels
 - b. Innovation in Home lending to Low and Medium Income Levels
 - c. Home Lending in Previously Disadvantaged Areas
 - d. Lending to Small Building Contractors
 - e. Performance with Respect to other aspects of home lending
3. A rating model in order to sum a financial institution's performance in respect of community reinvestment in housing. The model must incorporate the following four categories of performance:

Outstanding

Satisfactory

Unsatisfactory

Substantial non-compliance

Written Assessment

7. After examination of a financial institution, the Office must prepare a written assessment, as prescribed, of the financial institution's record of meeting housing credit needs, with respect to the targets and standards set by the Minister and using the assessment instrument prescribed according to Section 6(2).

Report to Minister

8. The Office must include in its annual report to the Minister, a section outlining the actions it has taken to carry out its responsibilities in terms of this Act.

Regulations

9. The Minister must, after consultation with the Ministers of Finance, Justice and Trade and Industry, make regulations regarding any matter which -
- a. in terms of this Act is required or permitted to be prescribed; and
 - b. is necessary or expedient to prescribe in order to achieve or promote the objectives of this Act

Exemptions

10. (1) The Minister may exempt a financial institution or a category of financial institutions, from any or all of the requirements of this Act for a specified period of time, if the financial institution or category of financial institutions requires time to adjust systems and procedures in order to comply with the provisions of this Act.
- (2) An exemption contemplated in subsection (1) may not exceed one year.
- (3) The Minister may also exempt a financial institution or a category of financial institutions, from any or all of the requirements of this Act for a specified period of time, based on the size or period of existence of the institution.

Offences and penalties

11. (1) Any person and/or financial institution who contravenes or fails to comply with any provision set out in sections 4(1), 4(2), 4(3), 5(1) and 5(2) of this Act is guilty of an offence.
- (2) A person and/or financial institution convicted of an offence in terms of subsection (1) is liable to a fine not exceeding 8500 000,00.

Short title and commencement

12. This Act is called the Community Reinvestment (Housing) Act, and takes effect on a date determined by the President by proclamation in the Gazette.