

107TH CONGRESS  
2D SESSION

# H. R. 4818

To amend the Real Estate Settlement Procedures Act of 1974 and the Truth in Lending Act to make the residential mortgage process more understandable, fair, and competitive.

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## IN THE HOUSE OF REPRESENTATIVES

MAY 22, 2002

Mr. LAFALCE introduced the following bill; which was referred to the  
Committee on Financial Services

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## A BILL

To amend the Real Estate Settlement Procedures Act of 1974 and the Truth in Lending Act to make the residential mortgage process more understandable, fair, and competitive.

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 “Mortgage Loan Con-  
5       sumer Protection Act”.

1 **SEC. 2. DISCLOSURE SIMPLIFICATION AND IMPROVEMENT.**

2 (a) MORE ACCURATE FINANCE CHARGE.—Sub-  
3 section (e) of section 106 of the Truth in Lending Act  
4 (15 U.S.C. 1605(e)) is amended to read as follows:

5 “(e) EXCLUSION OF CERTAIN ESCROWS.—Escrows  
6 for future payments of taxes and insurance shall not be  
7 included in the computation of the finance charge with re-  
8 spect to any extension of credit secured by an interest in  
9 real property.”.

10 (b) MORE UNDERSTANDABLE DISCLOSURE STATE-  
11 MENTS.—Section 4(a) of the Real Estate Settlement Pro-  
12 cedures Act of 1974 (12 U.S.C. 2603(a)) is amended—

13 (1) by inserting “(1)” after “(a)”; and

14 (2) by adding at the end the following new  
15 paragraph:

16 “(2) In developing and prescribing such form, the  
17 Secretary shall clearly delineate, and provide a box for to-  
18 tals for, the following 3 types of charges:

19 “(A) ‘Closing Costs’, which shall include all  
20 noninterest costs that the consumer is required to  
21 pay as a condition for receiving the extension of  
22 credit. Fees paid to or collected by the lender may  
23 be itemized by purpose, but must also be totaled up  
24 and shown separately under the heading ‘Total  
25 Lender Fees’.

“(B) ‘Prepaid Items’, which shall include pre-  
paid interest, funds deposited into any escrow ac-  
count, and any other items required by the lender to  
be paid in advance.

“(C) ‘All Other Costs Paid At Closing’, which shall include all costs paid at the time of closing that are neither Closing Costs nor Prepaid Items.”.

8 (c) HARMONIZATION OF GOOD FAITH ESTIMATE AND  
9 SETTLEMENT STATEMENT.—Section 5(c) of the Real Es-  
10 tate Settlement Procedures Act of 1974 (12 U.S.C.  
11 2604(c)) is amended—

12 (1) by inserting “(1)” after “(c)”; and

13 (2) by adding at the end the following new  
14 paragraph:

15       “(2) The Secretary shall, to the maximum extent,  
16 harmonize the terms and forms for the good faith estimate  
17 required under this subsection and the final settlement  
18 statement required under section 4, which shall include  
19 delineating, on the good faith estimate, the 3 types of  
20 charges specified under section 4(a)(2).”.

21 SEC. 3. ADVANCE AVAILABILITY OF FINAL SETTLEMENT  
22 STATEMENT.

23       Section 4(b) of the Real Estate Settlement Proce-  
24       dures Act of 1974 (12 U.S.C. 2603(b)) is amended—

25 (1) by inserting “(1)” after “(b)”;

1           (2) in the first sentence, by striking “at or be-  
 2       fore settlement” and inserting “at least 2 days be-  
 3       fore settlement”; and

4           (3) by striking the last sentence.

5 **SEC. 4. PROHIBITION AGAINST MARKUPS AND UNDIS-**  
 6 **CLOSED LENDER FEES.**

7       (a) REQUIREMENT TO DISCLOSE ALL LENDER  
 8 FEES.—Section 4 of the Real Estate Settlement Proce-  
 9 dures Act of 1974 (12 U.S.C. 2603) is amended by adding  
 10 at the end the following new subsection:

11       “(c)(1) All fees paid to or collected by a lender in  
 12 connection with a federally related mortgage loan shall be  
 13 clearly disclosed as being paid to such lender on the settle-  
 14 ment statement for such mortgage loan.”.

15       (b) PROHIBITION OF MARKUPS AND UNEARNED  
 16 FEES.—Section 8(b) of the Real Estate Settlement Proce-  
 17 dures Act of 1974 (12 U.S.C. 2607(b)) is amended by in-  
 18 sert after the period at the end the following: “This sub-  
 19 section prohibits markups of the cost of services performed  
 20 or goods provided by another settlement service provider,  
 21 and fees charged or collected by one settlement service  
 22 provider where no, nominal, or duplicative work is done.”.

23 **SEC. 5. ENHANCED CONSUMER ASSISTANCE.**

24       Section 5(b) of the Real Estate Settlement Proce-  
 25 dures Act of 1974 (12 U.S.C. 2604(b)) is amended—

1           (1) in paragraph (4) by striking “and” at the  
2       end;

3           (2) in paragraph (5), by striking the period at  
4       the end and inserting “; and”; and

5           (3) by adding at the end the following new  
6       paragraphs:

7           “(6) an explanation of the issues regarding the  
8       cost-efficiency of refinancing a mortgage loan, in-  
9       cluding the tradeoffs between mortgage interest  
10      rates and closing costs (including tax consider-  
11      ations), and other factors that may affect a mortga-  
12      gor’s decision to refinance; and

13          “(7) an explanation that some lenders may  
14      offer the mortgagor the option to pay some fees up-  
15      front or in the form of a higher mortgage interest  
16      rate, and assistance in evaluating this type of op-  
17      tion.”.

18   **SEC. 6. ADDITIONAL ESCROW ACCOUNT PROTECTIONS.**

19       Section 10 of the Real Estate Settlement Procedures  
20   Act of 1974 (12 U.S.C. 2609) is amended by adding at  
21   the end the following new subsections:

22       “(e) **LIABILITY OF SERVICERS.**—A servicer (as such  
23   term is defined in section 6(i)) for a federally related mort-  
24   gage loan, in connection with which an escrow account is  
25   established, shall be liable to the borrower for any fees,

1 penalties, and other charges that arise out of the servicer's  
2 failure to make timely payment of taxes, insurance pre-  
3 miums, or other charges that are required to be paid out  
4 of such escrow account.

5       “(f) FORCE-PLACED HAZARD INSURANCE.—A  
6 servicer for a federally related mortgage loan may not re-  
7 ceive any portion of any charge, rebate, or other fee associ-  
8 ated with any force-placed hazard insurance in connection  
9 with such loan that arises from the servicer's failure to  
10 make timely payment of insurance premiums.

11       “(g) TIMELY CREDITING OF ESCROW FUNDS.—

12               “(1) REQUIREMENT.—The servicer for a feder-  
13 ally related mortgage loan shall return to the bor-  
14 rower under such loan any amounts remaining in  
15 any escrow account established for such loan, as fol-  
16 lows:

17               “(A) NOTICE OF PAYMENT.—If the bor-  
18 rower provides written notice to the servicer of  
19 intent to pay a loan in full not less than 7 days  
20 before such payment, such amounts shall be re-  
21 turned not later than the date that such loan  
22 is paid in full. Such return of funds may be in  
23 the form of an offset against the amount re-  
24 quired to pay the loan in full.

1           “(B) GENERAL DEADLINE.—In no case  
2           shall such amounts be returned later than 21  
3           days after the date that the loan is paid in full.

4           “(2) LIABILITY FOR FAILURE TO RETURN ES-  
5           CROW AMOUNTS.—A servicer who fails to comply  
6           with the requirements under paragraph (1) shall be  
7           liable to the borrower under the loan for the  
8           unreturned amount, plus a penalty equal to the sum  
9           of 20 percent of the unreturned amount plus 1 per-  
10          cent for each month that such amounts remain  
11          unreturned to the borrower.”.

12 **SEC. 7. ENFORCEMENT OF RESPA CONSUMER PROTEC-**  
13 **TIONS.**

14          (a) UNIFORM ENFORCEMENT PROVISIONS.—The  
15 Real Estate Settlement Procedures Act of 1974 is amend-  
16 ed by inserting after section 12 (12 U.S.C. 2610) the fol-  
17 lowing new section:

18 **“SEC. 13. DAMAGES AND COSTS.**

19          “Whoever fails to comply with any provision of sec-  
20 tion 4, 5, 6, or 10(c) shall be liable to the borrower for  
21 each such failure in an amount equal to the sum of the  
22 following:

23               “(1) ACTUAL DAMAGES.—Any actual damages  
24               to the borrower as a result of such failure.

1           “(2) ADDITIONAL DAMAGES.—Any additional  
2           damages, as the court may allow, in an amount not  
3           to exceed \$2,000 for each loan.

4           “(3) COSTS.—In the case of any successful ac-  
5           tion for damages pursuant to this section, the costs  
6           of the action, together with any attorneys’ fees in-  
7           curred in connection with such action as the court  
8           may determine to be reasonable under the cir-  
9           cumstances.”.

10          (b) SUPERSEDED ENFORCEMENT PROVISIONS.—The  
11          Real Estate Settlement Procedures Act of 1974 is  
12          amended—

13                 (1) in section 6 (12 U.S.C. 2605), by striking  
14                 subsection (f); and

15                 (2) in section 10 (12 U.S.C. 2609), by striking  
16                 subsection (d).

17          (c) JURISDICTION OF COURTS AND STATUTE OF LIM-  
18          ITATIONS.—Section 16 of the Real Estate Settlement Pro-  
19          cedures Act of 1974 (12 U.S.C. 2614) is amended—

20                 (1) by striking “, or 9” and inserting “, 9, 10,  
21                 or 13”; and

22                 (2) by striking “in the case of a violation of sec-  
23                 tion 6” and all that follows through “may be  
24                 brought within 3 years”.



1 **SEC. 8. EFFECTIVE DATE.**

2       The amendments made by this Act shall be made and  
3 shall apply upon the expiration of the 180-day period be-  
4 ginning on the date of the enactment of this Act.

