

HOMEOWNERS INSURANCE PROTECTION ACT

APRIL 16, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. LEACH, from the Committee on Banking and Financial Services, submitted the following

R E P O R T

[To accompany H.R. 607]

[Including cost estimate of the Congressional Budget Office]

The Committee on Banking and Financial Services, to whom was referred the bill (H.R. 607) to amend the Truth in Lending Act to require notice of cancellation rights with respect to private mortgage insurance which is required by a creditor as a condition for entering into a residential mortgage transaction, and for other purposes, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

The amendments are as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Homeowners Insurance Protection Act”.

SEC. 2. PROVISIONS RELATING TO PRIVATE MORTGAGE INSURANCE.

(a) IN GENERAL.—Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) is amended—

(1) by redesignating subsections (f), (g), (h), (i), and (j) as subsections (k), (l), (m), (n), and (o), respectively; and

(2) by inserting after subsection (e) the following new subsections:

“(f) DISCLOSURES RELATING TO PRIVATE MORTGAGE INSURANCE.—

“(1) DISCLOSURE AT SETTLEMENT RELATING TO EXISTENCE OF PMI.—With regard to any covered mortgage loan, the lender shall disclose, in writing at or before the settlement of such covered mortgage loan, whether any private mortgage insurance will be required to be obtained or maintained with respect to such mortgage loan, including any lender-paid private mortgage insurance, and the period during which such insurance will be required to be in effect.

“(2) DISCLOSURE AT SETTLEMENT RELATING TO TERMINABILITY OF PMI.—If the lender requires, as a condition for entering into a covered mortgage loan, the borrower to assume an obligation to make separately designated payments toward the premiums for private mortgage insurance with respect to such loan, the lender shall disclose, in writing at or before the settlement of such covered

mortgage loan any of the following notices which are applicable with respect to such loan:

“(A) PMI OBLIGATIONS TERMINABLE UPON REQUEST.—In the case of a loan described in paragraph (3), that—

“(i) the borrower’s obligation to make separately designated payments toward the premiums for private mortgage insurance may be able to be terminated while the mortgage is outstanding (including a cancellation permitted before the date of automatic termination under subsection (g)); and

“(ii) the borrower will be notified by the servicer not less frequently than annually of an address and a toll-free or collect-call telephone number which the borrower may use to contact the servicer to determine—

“(I) whether the borrower’s obligation to make separately designated payments toward the premium for private mortgage insurance may be terminated while the mortgage loan is outstanding (or before the date of automatic termination); and

“(II) if such obligation may be terminated while the loan is outstanding (or before such date), the conditions and procedures for such termination.

“(B) PMI OBLIGATIONS TERMINABLE BY OPERATION OF LAW.—That the borrower’s obligation to make separately designated payments toward the premiums for private mortgage insurance will be terminated by operation of law under subsection (g).

“(C) NONTERMINABLE PMI OBLIGATIONS.—In the case of a loan not described in paragraph (3), that the borrower’s obligation to pay any amount to be applied to any portion of the premiums for private mortgage insurance will not be terminated at the request of the borrower.

“(3) DISCLOSURE WITH ANNUAL STATEMENTS OR OTHER COMMUNICATIONS.—If—

“(A) private mortgage insurance is required as a condition for entering into a covered mortgage loan; and

“(B) the borrower’s obligation to make separately designated payments toward the premiums for such insurance may be terminated at the borrower’s request,

the servicer shall, not less frequently than annually, disclose to the borrower a clear and conspicuous statement containing the disclosures set forth in subparagraphs (A) and (B) of paragraph (2), including the address and telephone number referred to in such paragraph, based on the servicer’s knowledge at the time such periodic communication is given. Such disclosure shall be included with any annual statement of account, escrow statement, or related annual communications provided to the borrower, while such private mortgage insurance is in effect.

“(4) DISCLOSURES FURNISHED WITHOUT COST TO BORROWER.—No fee or other cost may be imposed on any borrower for preparing and delivering any disclosure to the borrower pursuant to this subsection.

“(g) MANDATORY TERMINATION OF PMI OBLIGATIONS AT 75 PERCENT LOAN-TO-VALUE RATIO.—

“(1) IN GENERAL.—Notwithstanding any provision of a covered mortgage loan, any obligation of the borrower to make separately designated payments toward the premiums for any private mortgage insurance in effect with respect to such loan shall terminate, except as provided in paragraph (3), by operation of law as of the 1st day of the 1st month which begins after the date on which the principal balance outstanding on all residential mortgages on the property securing the loan is equal to or less than 75 percent of the lesser of—

“(A) if the loan was made for purchase of the property, the sales price of the property under such purchase; or

“(B) the appraised value of the property, as determined by the appraisal conducted in connection with the making of the loan.

“(2) DISCLOSURE UPON TERMINATION.—Not later than 45 days after the date of termination pursuant to paragraph (1) of a private mortgage insurance requirement for a covered mortgage loan, the servicer shall notify the borrower under the loan, in writing, that—

“(A) the private mortgage insurance has terminated and the borrower no longer has private mortgage insurance; and

“(B) no further premiums, payments, or other fees shall be due or payable by the borrower in connection with the private mortgage insurance.

“(3) EXCEPTION FOR DELINQUENT BORROWERS.—

“(A) IN GENERAL.—Paragraph (1) shall not apply with respect to any covered mortgage loan on which the payments are not current as of the date that the obligation to make private mortgage insurance premium payments in connection with the loan would otherwise terminate pursuant to paragraph (1).

“(B) EFFECTIVENESS ONCE PAYMENTS ARE CURRENT.—In the case of any covered mortgage loan to which subparagraph (A) applies, paragraph (1) shall apply with respect to such loan as of the 1st day of the 1st month which begins after the date that such payments become current.

“(4) RETURN OF PAYMENTS TOWARD PREMIUMS.—

“(A) RETURN OF PAYMENTS TO BORROWER.—The servicer for a covered mortgage loan shall promptly return to the borrower any payments toward the premiums for any private mortgage insurance for such loan covering any period occurring after the date of automatic termination for such loan under this subsection.

“(B) RETURN OF PAYMENTS TO SERVICER.—The private mortgage insurer for a covered mortgage loan shall promptly return to the servicer any payments received from the servicer toward the premiums for any private mortgage insurance for such loan covering any period occurring after the date of automatic termination for such loan under this subsection.

“(h) LENDERS’ CONDITIONS FOR PMI.—

“(1) CONDITIONS FOR TERMINATION OF BORROWER’S OBLIGATION TO PAY PMI.—The conditions for the termination of the borrower’s obligation to make separately designated payments toward the premium for private mortgage insurance with respect to a covered mortgage loan, including any changes in such conditions, shall be reasonably related to the purposes for which the requirement for private mortgage insurance was imposed at the time the loan was made.

“(2) BORROWER’S RIGHT TO TERMINATE IN ACCORDANCE WITH CONDITIONS.—In the case of any covered mortgage loan described in subsection (f)(3), the borrower shall have the right under this paragraph to terminate the borrower’s obligation to make separately designated payments toward the premiums for such insurance if the conditions and procedures for such termination most recently communicated to the borrower (pursuant to a request by the borrower pursuant to notice under subsection (f)(3) or otherwise) have been met.

“(i) EFFECT ON OTHER AGREEMENTS.—The provisions of subsections (f), (g), and (h) shall supersede any conflicting provision contained in any agreement relating to the servicing of a covered mortgage loan entered into by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any private investor or noteholder (or any successors thereto). A servicer which cancels private mortgage insurance on a covered mortgage loan in compliance with the provisions of subsection (g) or (h) or in accordance with investor guidelines in existence at the time concerning the cancellation of private mortgage insurance (regardless of whether the cancellation by the servicer was mandated by such subsections or initiated by the borrower) shall not be required to repurchase such mortgage loan from the investor or holder of such mortgage loan solely on the grounds that the private mortgage insurance was canceled in accordance with the provisions of such subsections or investor guidelines, as applicable.

“(j) LIMITATIONS ON LIABILITY.—If the servicer for a covered mortgage loan has complied with the requirements under subsections (f) and (g) to provide disclosures, the servicer shall not be considered to have violated any provision of subsection (f), (g), or (h) and shall not be liable for any such violation—

“(1) due to any failure on the part of the servicer to provide disclosures required under such subsections resulting from the failure of any mortgage insurer, any mortgage holder, or any other party to timely provide accurate information to the servicer necessary to permit the disclosures; or

“(2) due to any failure on the part of any private mortgage insurer, any mortgage holder, or any other party to comply with the provisions of such subsections.

Each private mortgage insurer and each mortgage holder for a covered mortgage loan shall provide accurate and timely information to the servicer for such loan necessary to permit the disclosures required by subsections (f) and (g). In the event of a dispute regarding liability for a violation of subsection (f), (g), or (h), and upon request by the borrower, a servicer shall provide the borrower with information stating the identity of the insurer or mortgage holder.”

(b) DEFINITIONS.—Subsection (n) of section 6 of the Real Estate Settlement Procedures Act of 1974 (as redesignated by subsection (a)(1)) is amended—

(1) by redesignating paragraphs (1), (2), and (3) as paragraphs (2), (5), and (6), respectively;

(2) by inserting before paragraph (2) (as redesignated by paragraph (1) of this subsection) the following new paragraph:

“(1) COVERED MORTGAGE LOAN.—The term ‘covered mortgage loan’ means a federally related mortgage loan under which the property securing the loan is used by the borrower as the borrower’s principal residence.”; and

(3) by inserting after paragraph (2) (as so redesignated) the following new paragraphs:

“(3) MORTGAGE INSURANCE.—The term ‘mortgage insurance’ means insurance, including any mortgage guaranty insurance, against the nonpayment of, or default on, a mortgage or loan involved in a residential mortgage transaction, the premiums for which are paid by the borrower.

“(4) PRIVATE MORTGAGE INSURANCE.—The term ‘private mortgage insurance’ means mortgage insurance other than mortgage insurance made available under the National Housing Act, title 38 of the United States Code, or title V of the National Housing Act of 1949.”.

SEC. 3. SCOPE OF APPLICABILITY.

(a) NOTICE AT OR BEFORE SETTLEMENT.—Paragraphs (1) and (2) of section 6(f) of the Real Estate Settlement Procedures Act of 1974 (as added by section 2(a) of this Act) shall apply only with respect to covered mortgage loans made after the end of the 1-year period beginning on the date of the enactment of this Act.

(b) NOTICE OF PMI OBLIGATION TERMINABILITY.—Paragraphs (3) and (4) of section 6(f) of the Real Estate Settlement Procedures Act of 1974 (as added by section 2(a) of this Act) shall apply beginning upon the end of the 1-year period that begins on the date of the enactment of this Act and with respect to any covered mortgage loan without regard to the date on which such loan was made.

(c) TERMINATION OF PMI OBLIGATION BY OPERATION OF LAW.—Subsections (g) and (h) of section 6 of the Real Estate Settlement Procedures Act of 1974 (as added by section 2(a) of this Act) shall apply only with respect to covered mortgage loans made after the end of the 1-year period beginning on the date of the enactment of this Act.

SEC. 4. CONFORMING AMENDMENTS.

(a) SECTION 6.—Section 6(m) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) (as redesignated by section 2(a)(1) of this Act) is amended—

(1) by inserting “(not including subsection (f))” before “regarding timing”; and
 (2) by adding at the end the following new sentence: “The preceding sentence shall not apply to any State law or regulation relating to notice or disclosure to a borrower regarding obtaining, maintaining, or terminating private mortgage insurance and such State laws and regulations shall be subject to the provisions of section 18.”.

(b) SECTION 10.—Section 10(b) of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2609(b)) is amended by striking “section 6(i)” and inserting “section 6(n)”.

(c) SECTION 12.—Section 12 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2610) is amended by striking “section 6(i)” and inserting “section 6(n)”.

Amend the title so as to read:

A bill to amend the Real Estate Settlement Procedures Act of 1974 to require notice of cancellation rights with respect to private mortgage insurance which is required as a condition of entering into certain federally related mortgage loans and to provide for cancellation of such insurance, and for other purposes.

PURPOSE AND SUMMARY

The purpose of this legislation is to establish Federal guidelines for disclosure and termination of private mortgage insurance (PMI). Some states already require disclosures regarding PMI and a few states even require automatic termination of PMI. For instance, New York requires PMI to be terminated when a borrower reaches 75% loan-to-value ratio (LTV). Due to the variance in states requirements, a Federal guideline would serve as a minimum standard.

H.R. 607, as amended by the Committee, provides for three major reforms of the private mortgage insurance industry. First, it

requires mortgage lenders and servicers to disclose to borrowers if PMI is required and, if so, how borrowers can terminate it. These notices are required at the time of settlement and annually while PMI is required. Second, the bill provides for a statutory right for borrowers to terminate PMI once the conditions disclosed under the above-required notices are met. Third, the bill provides for automatic termination of PMI once the loan reaches a 75% LTV and if the borrower is current on payments. The borrower must also be given notice once the loan reaches the 75% LTV. The new notice requirement at settlement takes effect one year after enactment. The annual notice requirement also takes effect one year after enactment and applies to existing loans. The new statutory rights to terminate PMI when the disclosed conditions are met and when the borrower has reached the 75% LTV are effective for loans made one year after enactment.

H.R. 607, as amended, would not preempt State laws. Further, the bill would not affect lender paid mortgage insurance (LPMI), except for the disclosure requirements made at settlement.

BACKGROUND AND NEED FOR LEGISLATION

Private mortgage insurance plays an important role in the mortgage industry by allowing low-income borrowers or borrowers with little cash greater access to home ownership. PMI enables homeowners to purchase homes with as little as a 3% to 5% down payment by insuring the mortgage lender or investor against default. For conventional mortgages, PMI is normally required whenever borrowers do not have 20% down payments.

Throughout the life of a mortgage, there are approximately four key parties: borrower (homeowner); lender (originator of loan); servicer (point of contact with the borrower); and investor (owner of the loan). In some cases, a lender can also serve as the servicer and/or investor of the loan. In the majority of cases, however, once a mortgage is originated, the loan is eventually sold to the secondary market which is either facilitated by the private capital markets or Government Sponsored Enterprises (GSEs), such as Federal National Mortgage Association (Fannie Mae) or Federal Home Loan Mortgage Corporation (Freddie Mac).

The secondary market participants provide underwriting standards which require mortgage insurance for loans with down payments of less than 20% of the value of the property. Usually, a mortgage with a LTV ratio equal to or less than 80% is considered an acceptable risk by the secondary market participants. While PMI serves the secondary market, it should not be confused with government mortgage insurance programs such as the FHA (Federal Housing Administration), VA (Veterans Affairs) and RHS (Rural Housing Service). These government mortgage insurance programs are packaged by the government and owned and operated by GNMA (Government National Mortgage Association). In either case, loans with less than 20% equity or down payment will require some type of insurance to protect the investor from loss by default or non-payment.

Some reports estimate that approximately 10% to 45% of current mortgages are insured by the private sector or the Federal government. Industry sources indicate that since 1994, PMI "has saved

home buyers \$38 billion on down payments [and over] the past 40 years, private mortgage insurance has enabled 17 million American households to become homeowners.”

Pursuant to industry’s practices, including those of Fannie Mae and Freddie Mac, investors allow termination of PMI when (1) the LTV is less than 80%, (2) the homeowner has a good payment history, and (3) the property value has not declined which is usually determined by an appraisal paid for by the homeowner of the property. Because there can be hundreds of investors, including the GSEs, local and state retirement funds, private capital markets, etc., no uniform termination guidelines exist. Thus, it is possible that homeowners who use the same mortgage servicer could be subject to different termination guidelines.

The need for legislation exists because homeowners are not always informed when PMI is required, and if it is, how it can be terminated. As Fannie Mae and Consumers Union stated in their testimonies, borrowers continue to pay PMI premiums when such insurance is no longer needed. Congressman Hansen testified that, on an average, \$16.25 million of overpayments are made by homeowners every month. Legislation is needed to establish Federal standards for disclosure and termination of PMI so that borrowers do not pay for insurance after all parties in the mortgage process agree that such insurance is no longer necessary.

Nothing in this bill is intended to increase the regulatory burdens on the private sector, especially mortgage servicers and lenders. Generally, mortgage servicers and lenders already have to make a number of disclosures to homeowners at settlement and during the life of the mortgage under the Truth in Lending Act and Real Estate Settlement Procedures Act. The intent of the Committee in drafting this legislation was to ensure that most of the notices concerning PMI are made in conjunction with the notice requirements of these acts. In addition, the biggest and most reputable mortgage servicers in the country are beginning to provide borrowers notices on PMI. Finally, a number of states already require or are considering requiring notices on PMI. For instance, the states of California and New York, which comprise 20% of the home mortgage market, require disclosure to borrowers on private mortgage insurance. This law would provide a minimum disclosure standard for the entire country, which may make other state legislatures less likely to impose new state standards on this subject.

HEARINGS

H.R. 607, the Homeowners Insurance Protection Act, was introduced on February 5, 1997, by Congressman James Hansen (R-UT). On March 18, 1997, the Committee held a hearing on H.R. 607 and issues relating to PMI.

Testifying at the hearing were: The Honorable James Hansen; the Honorable Joseph Kennedy (D-MA); The Honorable Waters (D-CA); Ann Logan, Executive Vice President & Chief Credit Officer, Fannie Mae; Michael Stamper, Executive Vice President for Risk Management, Freddie Mac; William Lacy, Chairman & CEO, Mortgage Guaranty Insurance Corporation on behalf of the Mortgage Insurance Companies of America (MICA); Ron McCord, President, American Mortgage & Investment Company on behalf of the Mort-

gage Bankers Association (MBA); Michelle Meier, Counsel for Government Affairs, Consumers Union; and Margot Saunders, Managing Attorney, National Consumer Law Center.

COMMITTEE CONSIDERATION AND VOTES

(Rule XI, Clause 2(1)(2)(B))

On March 20, 1997, the Committee met in open session to mark up H.R. 607, the "Homeowners Insurance Protection Act." The Committee considered as original text for purposes of amendment an Amendment in the Nature of a Substitute which incorporated the disclosure provisions of H.R. 607 and requirements of automatic termination of private mortgage insurance (PMI) at 75% loan-to-value ratio (LTV) and termination once a borrower has fulfilled all disclosed conditions for termination.

During the mark up, the Committee adopted three amendments by voice vote. First, an amendment to the substitute was offered by Mssrs. Leach, Bereuter and Gonzalez making a number of clarifications. Second, an amendment to the Leach et al amendment was offered by Mr. McCollum to impose an obligation on private mortgage insurers and mortgage holders to provide accurate and timely information to mortgage servicers on PMI. Third, an amendment offered by Mr. Watt to require the servicer and mortgage insurer to return to the borrower insurance payments made after the date of automatic termination.

The Committee defeated, by voice vote, two amendments. The first defeated amendment, offered by Mr. Vento, would have allowed automatic termination of PMI at 80% LTV if the borrower had a good payment history, the property value had not decreased, and the underlying loan was not specially structured; otherwise PMI would have been terminable at the half-life of the mortgage. The second amendment, offered by Mr. Kennedy, would have allowed PMI on existing mortgages to be canceled once the borrower had complied with any conditions established by the servicer.

Additionally, the Committee approved, by a recorded vote of 22-12, an amendment offered by Ms. Waters to strike the provisions in the Amendment in the Nature of a Substitute which would have preempted state laws regarding the disclosure requirements in the bill.

YEAS

Mrs. Roukema
Mr. Bachus
Mr. King
Mr. Campbell
Mrs. Kelly
Mr. Paul
Mr. Cook
Mr. Snowbarger
Mr. Riley
Mr. Hill
Mr. LaFalce
Mr. Vento
Mr. Frank

NAYS

Mr. Leach
Mr. McCollum
Mr. Bereuter
Mr. Baker (LA)
Mr. Castle
Mr. Royce
Mr. Lucas
Mr. Metcalf
Mr. Ehrlich
Mr. Weldon
Mr. Ryun
Mr. Sessions

Ms. Waters
 Mr. Barrett
 Mr. Watt
 Mr. Hinchey
 Mr. Bentsen
 Mr. Jackson
 Ms. Kilpatrick
 Mr. Maloney
 Ms. Hooley

After adopting the Amendment in the Nature of a Substitute, as amended, a motion to adopt H.R. 607, as amended, for final passage and to be reported to the full House of Representatives for consideration was approved 36–1.

YEAS

NAYS

Mr. Leach
 Mr. McCollum
 Mrs. Roukema
 Mr. Bereuter
 Mr. Lazio
 Mr. Bachus
 Mr. Castle
 Mr. Royce
 Mr. Metcalf
 Mr. Ney
 Mr. Ehrlich
 Mr. Fox
 Mrs. Kelly
 Mr. Weldon
 Mr. Ryun
 Mr. Cook
 Mr. Snowbarger
 Mr. Riley
 Mr. Sessions
 Mr. LaFalce
 Mr. Vento
 Mr. Schumer
 Mr. Frank
 Mr. Kennedy
 Mr. Sanders
 Mrs. Maloney
 Ms. Roybal-Allard
 Mr. Barrett
 Ms. Velázquez
 Mr. Watt
 Mr. Hinchey
 Mr. Ackerman
 Mr. Bentsen
 Mr. Jackson
 Ms. Hooley
 Ms. Carson

Mr. Paul

The committee adopted, by voice vote, a motion to authorize the Chairman to offer such motions as may be necessary in the House of Representatives to go to conference with the Senate.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports that the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings and recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(1)(3)(d) of rule XI of the Rules of the House of Representatives.

CONSTITUTIONAL AUTHORITY

In compliance with clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the constitutional authority for Congress to enact this legislation is derived from the interstate commerce clause (Clause 3, Article I). In addition, the power “to coin money” and “regulate the value thereof” provided for in Clause 5, Article I, has been broadly construed to regulate every phase of the subject of currency, including contracts for the payment of money, such as Federal regulation of mortgage contracts.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

Clause 2(1)(3)(B) of House rule XI is inapplicable because this legislation does not provide new budgetary authority or increased tax expenditures.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

CONGRESSIONAL ACCOUNTABILITY ACT

The reporting requirement under section 102(b)(3) of the Congressional Accountability Act (P.L. 104–1) is inapplicable because this legislation does not relate to terms and conditions of employment or access to public services or accommodations.

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE AND UNFUNDED
MANDATES ANALYSIS

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, April 7, 1997.

Hon. JIM LEACH,
*Chairman, Committee on Banking and Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 607, the Homeowners Insurance Protection Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Lisa H. Daley (for federal costs), John Patterson (for the impact on state and local governments), and Patrice Gordon (for the private-sector impact).

Sincerely,

JAMES L. BLUM
(For June E. O'Neill, Director).

Enclosure.

H.R. 607—Homeowners Insurance Protection Act

Summary: H.R. 607 would amend the Real Estate Settlement Procedures Act (RESPA) to institute certain reforms in the private mortgage insurance industry. The bill would require mortgage lenders and loan servicers to notify borrowers of their rights to cancel mortgage insurance, along with the procedures to do so. For loans made one year after enactment, the bill also would provide for the automatic cancellation of mortgage insurance (including coverage provided by state and local governments) when the outstanding principal balance on the loan drops to 75 percent of the value of the home at the time the loan was issued, provided the borrower's payments are current. The Department of Housing and Urban Development (HUD) would issue the necessary regulations and enforce the changes to RESPA.

Assuming appropriation of the necessary amounts, CBO estimates that the administrative costs of implementing H.R. 607 would be less than \$500,000 annually. In addition, the bill would affect direct spending and receipts in 1998, and thus pay-as-you-go procedures would apply. However, CBO estimates that the net effect of H.R. 607 on both direct spending and receipts would not be significant.

H.R. 607 would impose both private-sector and intergovernmental mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA). CBO estimates that the direct costs of complying with the mandates would not exceed the thresholds specified in UMRA (\$100 million for the private-sector mandates and \$50 million for intergovernmental mandates, in 1996 dollars adjusted annually for inflation).

Estimated cost to the Federal Government—Spending subject to appropriations: HUD currently is the primary regulatory agency for RESPA. To develop regulations and enforce compliance with the new procedures required by the bill's changes in RESPA, CBO expects that HUD would require a small number of additional full-

time staff. As a result, CBO estimates that enacting H.R. 607 would result in additional discretionary spending of less than \$500,000 annually, assuming appropriation of the necessary amounts.

Direct spending and revenues: This bill would affect insured depository institutions, including banks, thrifts, and credit unions that hold qualifying mortgage portfolios. As a result, the federal banking regulators—the Federal Reserve, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Office of Thrift Supervision—would have some responsibility to monitor and enforce the statute. Spending by these agencies is not subject to the annual appropriations process. However, CBO expects that the additional regulatory costs for these agencies would be small and offset by fees in most cases, resulting in no significant net costs to the federal government.

Pay-as-you-go considerations: Section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985 sets up pay-as-you-go procedures for legislation affecting direct spending or receipts through 1998. Legislation providing funding necessary to meet the government's existing deposit insurance commitment is excluded from these procedures. CBO believes that requiring insured depository institutions to terminate private mortgage insurance would not meet the exemption for full funding of deposit insurance and thus would have pay-as-you-go implications. Spending by the federal banking regulators to monitor and enforce the provisions of the bill is estimated to be small, however, and in most cases would be offset by fees charged to the depository institutions, resulting in no significant net cost to the federal government.

Intergovernmental and private-sector impact: H.R. 607 would impose both private-sector and intergovernmental mandates as defined in UMRA. The bill contains mandates on mortgage lenders, loan servicers, and private mortgage insurance (PMI) companies in the mortgage industry. CBO estimates that the annual direct costs of complying with mandates identified in this bill are not likely to exceed \$60 million in any of the first five years that mandates are effective and thus would not exceed the statutory thresholds for private-sector or intergovernmental mandates. Inasmuch as state and local governments finance mortgage loans and service and insure some of the loans extended, they would bear some of the costs of complying with these mandates. CBO estimates that at least 95 percent of all identified costs would fall on the private sector; less than 5 percent of the costs would be borne by state and local governments.

Private mortgage insurance protects lenders—or the ultimate purchaser of a mortgage loan, such as Fannie Mae or Freddie Mac—against financial loss if a borrower defaults on a mortgage loan. Industry data show that the lower the down payment, as a percentage of the properly value, the greater is the risk that the loan will default. Mortgage insurance is generally used when a borrower makes a down payment of less than 20 percent of the value of the home—that is, when the mortgage has a loan-to-value (LTV) ratio greater than 80 percent.

Mandates: The bill would amend the Real Estate Settlement Procedures Act (RESPA) which currently requires that borrowers receive disclosures at various times during the loan process. H.R. 607 would require lenders and servicers to provide additional disclosures to borrowers. Specifically, H.R. 607 would require lenders to disclose, at or before closing, whether private mortgage insurance is required and how long such insurance would have to be in effect. The bill would also require loan servicers and PMI companies to provide for automatic cancellation of private mortgage insurance under certain conditions.

Beginning one year after enactment, H.R. 607 would mandate, in cases where the lender requires private mortgage insurance (and the insurance is paid for by the borrower through regular installments), that the lender must notify the borrower in writing, at or before closing, whether the PMI policy may be canceled under certain conditions. The lender would also have to provide information about whom to contact at the company servicing the loans to obtain further information about procedures for cancellation. In addition, the lender would have to disclose the fact that mortgage insurance may be canceled after the outstanding principal of the loan reaches 75 percent of the original value of the house at the time of sale. Thereafter, loan servicers would be required to notify borrowers with PMI (including existing loans with PMI) of the above information with the annual written statement of account.

For new loans, starting one year after enactment, the bill would mandate automatic termination of PMI once the loan reaches a 75 percent LTV ratio and the borrower is current with loan payments. The loan servicer would have to notify borrowers that their PMI has been canceled when the LTV reaches 75 percent; and servicers and PMI companies would have to refund to the borrower any premiums paid after the LTV threshold was reached. H.R. 607 would also provide a right to terminate PMI for borrowers who have complied with the conditions outlined in the most recent annual notice concerning mortgage insurance termination supplied by the lender or mortgage servicer.

Estimated costs of mandates: In the first year after enactment, the total costs of the mandates identified in this bill could range from \$35 million to \$50 million. According to industry experts and officials at the Department of Housing and Urban Development, nearly 18,000 lenders and servicers would have to modify systems to accommodate the transmittal and storage of additional data. They would also be required to modify software programs to provide the additional disclosures to borrowers and to develop the procedures for automatic termination of private mortgage insurance. After the initial set-up period of about one year, costs would likely drop to between \$20 million and \$30 million per year. The bulk of these costs cover disclosure at or before settlement to roughly 6 million new borrowers each year and annual disclosure to 5 million or fewer borrowers who are currently paying for mortgage insurance.

CBO estimates that costs to the mortgage industry would start to rise again as the loss in premium income to PMI companies and the loss of interest income to servicers start to accumulate. (One expert in the private mortgage insurance industry estimates that

as much as 2 percent of all loans that are currently extended to relatively high-risk borrowers would no longer be written. In 1996, the eight PMI companies backed nearly 1 million residential mortgage loans with PMI. The total value of those loans was \$127 billion.) By the fifth year after implementation, the costs to the industry, measured as expenditures to comply with disclosure and termination requirements and the reduction in net income from lost business, would likely be less than \$60 million. Most loans to which automatic termination would apply would not reach an LTV ratio of 75 percent to qualify for termination until well after the 5-year period of analysis required by UMRA.

Estimated impact on State, local and tribal governments: Because State and local governments participate in mortgage financing, they would bear some of the costs of complying with the mandates imposed by H.R. 607. CBO estimates that the State and local share of such costs would total less than \$5 million per year. All 50 States and some local governments finance mortgages (primarily with mortgage revenue bonds), 21 States service at least a portion of their own mortgage portfolio, and seven States insure mortgages. (Private mortgage insurance as defined in this bill would also include insurance provided by State governments. Only insurance provided by the Federal Government is excluded.) Based on data from the National Council of State Housing Agencies and Standard & Poor's, CBO estimates that State and local governments are involved in less than 5 percent of mortgages that have private mortgage insurance. Their share of the total costs described above would thus be relatively small.

Estimate prepared by: Federal cost: Lisa H. Daley; impact on State, local, and tribal governments: John Patterson; impact on the private sector: Patrice Gordon.

Estimate approved by: Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

SECTION-BY-SECTION ANALYSIS

SECTION 1. SHORT TITLE

“Homeowners Insurance Protection Act”.

SECTION 2. PROVISIONS RELATING TO PRIVATE MORTGAGE INSURANCE

Section 2(a) adds five new subsections to section 6 of the Real Estate Settlement Procedures Act of 1974 (RESPA). Section 6 of RESPA requires the lender to disclose to the borrower information relating to the assignment, sale, or transfer of servicing of a federally related mortgage loan.

The new subsection (f) requires lenders and mortgage services to make disclosure of certain information regarding private mortgage insurance (PMI) to borrowers. The subsection requires the lender to disclose to borrowers, in writing, at or before the settlement of the mortgage loan, whether PMI is required, the duration for maintaining such insurance coverage, and information relating to how borrowers can terminate PMI which the servicers are required to annually disclose. If the borrower is required to obtain PMI, the mortgage servicer is required to disclose, if applicable, annual written notices that (i) PMI may be terminable while the loan is out-

standing, (ii) the address and telephone number a borrower can use to inquire if and how PMI may be terminated, (iii) that PMI is automatically terminable when the outstanding principal balance is at 75% loan-to-value ratio (LTV), as prescribed in subsection (g), or (iv) that certain PMI obligations are not terminable at the borrower's request. Additionally, the subsection prohibits the borrowers from being charged fees or other costs for the disclosure because of the requirements provided under subsection (f).

New subsection (g) allows automatic termination of PMI when the principal balance outstanding is at 75% LTV or less based on the lesser of the sales price or the original appraised value of the property. The subsection also requires the mortgage servicer to notify the borrower in writing not later than 45 days after the automatic termination date that the borrower no longer has mortgage insurance coverage and that the borrower no longer has to pay any premiums, payments, or fees in connection with PMI. In addition, if the borrower has made payments related to PMI premiums after the date of automatic termination, then the mortgage servicer, mortgage insurer, or whoever received the payments is required to promptly return them to the borrower.

Subsection (g) does not allow for automatic termination if the borrower's payments on the mortgage are not current. Under such circumstances, the borrower's right to automatic termination under this subsection resumes on the first day of the first month that payments become current.

New subsection (h) provides that the conditions to terminate PMI shall be reasonably related to the purpose of requiring PMI. Further, the subsection deems that borrowers have met the conditions to terminate PMI when they have complied with the conditions most recently communicated by the mortgage servicers.

New subsection (i) provides that provisions of subsections (f), (g), and (h) preempt any conflicting agreement relating to the servicing of a federally related residential mortgage loan entered into by Fannie Mae, Freddie Mac, or any private investor. The subsection further provides that a servicer is not required to repurchase a mortgage loan from the investor after PMI is canceled.

New subsection (j) provides that if mortgage insurers, holders or other parties failed to provide mortgage servicers with accurate information or to comply with other provisions under the Act, servicers who have complied with the requirements of the Act are not held liable and the party failing to provide timely and accurate information is liable. Further, the subsection allows a mortgage servicer to provide the borrower with information identifying the appropriate parties in the event of a dispute regarding liability.

Section 2(b) defines the terms "provide mortgage insurance", "mortgage insurance", and "covered mortgage loan" with the latter being defined as any federally related mortgage loan secured by a borrower's principal residence.

SECTION 3. SCOPE OF APPLICABILITY

Section 3 details when the disclosure and termination provisions of the bill take effect. Those provisions of the bill requiring notice regarding PMI (except for the notice required at or before settlement) apply to existing mortgages one year after enactment. The

provisions authorizing the 75% LTV automatic termination of PMI and the borrower's right to terminate PMI, once disclosed conditions are met, affect existing mortgages one year after enactment.

SECTION 4. CONFORMING AMENDMENTS

Section 4 makes a number of conforming amendments to RESPA including the clarification that state laws or regulations relating to notice or disclosure to a borrower regarding PMI are not preempted.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

* * * * *

SERVICING OF MORTGAGE LOANS AND ADMINISTRATION OF ESCROW ACCOUNTS

SEC. 6. (a) * * *

* * * * *

(f) DISCLOSURES RELATING TO PRIVATE MORTGAGE INSURANCE.—

(1) DISCLOSURE AT SETTLEMENT RELATING TO EXISTENCE OF PMI.—With regard to any covered mortgage loan, the lender shall disclose, in writing at or before the settlement of such covered mortgage loan, whether any private mortgage insurance will be required to be obtained or maintained with respect to such mortgage loan, including any lender-paid private mortgage insurance, and the period during which such insurance will be required to be in effect.

(2) DISCLOSURE AT SETTLEMENT RELATING TO TERMINABILITY OF PMI.—If the lender requires, as a condition for entering into a covered mortgage loan, the borrower to assume an obligation to make separately designated payments toward the premiums for private mortgage insurance with respect to such loan, the lender shall disclose, in writing at or before the settlement of such covered mortgage loan any of the following notices which are applicable with respect to such loan:

(A) PMI OBLIGATIONS TERMINABLE UPON REQUEST.—In the case of a loan described in paragraph (3), that—

(i) the borrower's obligation to make separately designated payments toward the premiums for private mortgage insurance may be able to be terminated while the mortgage is outstanding (including a cancellation permitted before the date of automatic termination under subsection (g)); and

(ii) the borrower will be notified by the servicer not less frequently than annually of an address and a toll-

free or collect-call telephone number which the borrower may use to contact the servicer to determine—

(I) whether the borrower's obligation to make separately designated payments toward the premium for private mortgage insurance may be terminated while the mortgage loan is outstanding (or before the date of automatic termination); and

(II) if such obligation may be terminated while the loan is outstanding (or before such date), the conditions and procedures for such termination.

(B) **PMI OBLIGATIONS TERMINABLE BY OPERATION OF LAW.**—That the borrower's obligation to make separately designated payments toward the premiums for private mortgage insurance will be terminated by operation of law under subsection (g).

(C) **NONTERMINABLE PMI OBLIGATIONS.**—In the case of a loan not described in paragraph (3), that the borrower's obligation to pay any amount to be applied to any portion of the premiums for private mortgage insurance will not be terminated at the request of the borrower.

(3) **DISCLOSURE WITH ANNUAL STATEMENTS OR OTHER COMMUNICATIONS.**—If—

(A) private mortgage insurance is required as a condition for entering into a covered mortgage loan; and

(B) the borrower's obligation to make separately designated payments toward the premiums for such insurance may be terminated at the borrower's request,

the servicer shall, not less frequently than annually, disclose to the borrower a clear and conspicuous statement containing the disclosures set forth in subparagraphs (A) and (B) of paragraph (2), including the address and telephone number referred to in such paragraph, based on the servicer's knowledge at the time such periodic communication is given. Such disclosure shall be included with any annual statement of account, escrow statement, or related annual communications provided to the borrower, while such private mortgage insurance is in effect.

(4) **DISCLOSURES FURNISHED WITHOUT COST TO BORROWER.**—No fee or other cost may be imposed on any borrower for preparing and delivering any disclosure to the borrower pursuant to this subsection.

(g) **MANDATORY TERMINATION OF PMI OBLIGATIONS AT 75 PERCENT LOAN-TO-VALUE RATIO.**—

(1) **IN GENERAL.**—Notwithstanding any provision of a covered mortgage loan, any obligation of the borrower to make separately designated payments toward the premiums for any private mortgage insurance in effect with respect to such loan shall terminate, except as provided in paragraph (3), by operation of law as of the 1st day of the 1st month which begins after the date on which the principal balance outstanding on all residential mortgages on the property securing the loan is equal to or less than 75 percent of the lesser of—

(A) if the loan was made for purchase of the property, the sales price of the property under such purchase; or

(B) *the appraised value of the property, as determined by the appraisal conducted in connection with the making of the loan.*

(2) *DISCLOSURE UPON TERMINATION.—Not later than 45 days after the date of termination pursuant to paragraph (1) of a private mortgage insurance requirement for a covered mortgage loan, the servicer shall notify the borrower under the loan, in writing, that—*

(A) *the private mortgage insurance has terminated and the borrower no longer has private mortgage insurance; and*

(B) *no further premiums, payments, or other fees shall be due or payable by the borrower in connection with the private mortgage insurance.*

(3) *EXCEPTION FOR DELINQUENT BORROWERS.—*

(A) *IN GENERAL.—Paragraph (1) shall not apply with respect to any covered mortgage loan on which the payments are not current as of the date that the obligation to make private mortgage insurance premium payments in connection with the loan would otherwise terminate pursuant to paragraph (1).*

(B) *EFFECTIVENESS ONCE PAYMENTS ARE CURRENT.—In the case of any covered mortgage loan to which subparagraph (A) applies, paragraph (1) shall apply with respect to such loan as of the 1st day of the 1st month which begins after the date that such payments become current.*

(4) *RETURN OF PAYMENTS TOWARD PREMIUMS.—*

(A) *RETURN OF PAYMENTS TO BORROWER.—The servicer for a covered mortgage loan shall promptly return to the borrower any payments toward the premiums for any private mortgage insurance for such loan covering any period occurring after the date of automatic termination for such loan under this subsection.*

(B) *RETURN OF PAYMENTS TO SERVICER.—The private mortgage insurer for a covered mortgage loan shall promptly return to the servicer any payments received from the servicer toward the premiums for any private mortgage insurance for such loan covering any period occurring after the date of automatic termination for such loan under this subsection.*

(h) *LENDERS' CONDITIONS FOR PMI.—*

(1) *CONDITIONS FOR TERMINATION OF BORROWER'S OBLIGATION TO PAY PMI.—The conditions for the termination of the borrower's obligation to make separately designated payments toward the premium for private mortgage insurance with respect to a covered mortgage loan, including any changes in such conditions, shall be reasonably related to the purposes for which the requirement for private mortgage insurance was imposed at the time the loan was made.*

(2) *BORROWER'S RIGHT TO TERMINATE IN ACCORDANCE WITH CONDITIONS.—In the case of any covered mortgage loan described in subsection (f)(3), the borrower shall have the right under this paragraph to terminate the borrower's obligation to make separately designated payments toward the premiums for*

such insurance if the conditions and procedures for such termination most recently communicated to the borrower (pursuant to a request by the borrower pursuant to notice under subsection (f)(3) or otherwise) have been met.

(i) **EFFECT ON OTHER AGREEMENTS.**—*The provisions of subsections (f), (g), and (h) shall supersede any conflicting provision contained in any agreement relating to the servicing of a covered mortgage loan entered into by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any private investor or noteholder (or any successors thereto). A servicer which cancels private mortgage insurance on a covered mortgage loan in compliance with the provisions of subsection (g) or (h) or in accordance with investor guidelines in existence at the time concerning the cancellation of private mortgage insurance (regardless of whether the cancellation by the servicer was mandated by such subsections or initiated by the borrower) shall not be required to repurchase such mortgage loan from the investor or holder of such mortgage loan solely on the grounds that the private mortgage insurance was canceled in accordance with the provisions of such subsections or investor guidelines, as applicable.*

(j) **LIMITATIONS ON LIABILITY.**—*If the servicer for a covered mortgage loan has complied with the requirements under subsections (f) and (g) to provide disclosures, the servicer shall not be considered to have violated any provision of subsection (f), (g), or (h) and shall not be liable for any such violation—*

(1) *due to any failure on the part of the servicer to provide disclosures required under such subsections resulting from the failure of any mortgage insurer, any mortgage holder, or any other party to timely provide accurate information to the servicer necessary to permit the disclosures; or*

(2) *due to any failure on the part of any private mortgage insurer, any mortgage holder, or any other party to comply with the provisions of such subsections.*

Each private mortgage insurer and each mortgage holder for a covered mortgage loan shall provide accurate and timely information to the servicer for such loan necessary to permit the disclosures required by subsections (f) and (g). In the event of a dispute regarding liability for a violation of subsection (f), (g), or (h), and upon request by the borrower, a servicer shall provide the borrower with information stating the identity of the insurer or mortgage holder.

[(f)] (k) DAMAGES AND COSTS.—*Whoever fails to comply with any provision of this section shall be liable to the borrower for each such failure in the following amounts:*

(1) * * *

* * * * *

[(g)] (l) ADMINISTRATION OF ESCROW ACCOUNTS.—*If the terms of any federally related mortgage loan require the borrower to make payments to the servicer of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall make payments from the escrow account for such taxes, insurance premiums, and other charges in a timely manner as such payments become due.*

[(h)] (m) PREEMPTION OF CONFLICTING STATE LAWS.—Notwithstanding any provision of any law or regulation of any State, a person who makes a federally related mortgage loan or a servicer shall be considered to have complied with the provisions of any such State law or regulation requiring notice to a borrower at the time of application for a loan or transfer of the servicing of a loan if such person or servicer complies with the requirements under this section (not including subsection (f)) regarding timing, content, and procedures for notification of the borrower. *The preceding sentence shall not apply to any State law or regulation relating to notice or disclosure to a borrower regarding obtaining, maintaining, or terminating private mortgage insurance and such State laws and regulations shall be subject to the provisions of section 18.*

[(i)] (n) DEFINITIONS.—For purposes of this section:

(1) COVERED MORTGAGE LOAN.—*The term “covered mortgage loan” means a federally related mortgage loan under which the property securing the loan is used by the borrower as the borrower’s principal residence.*

[(1)] (2) EFFECTIVE DATE OF TRANSFER.—The term “effective date of transfer” means the date on which the mortgage payment of a borrower is first due to the transferee servicer of a mortgage loan pursuant to the assignment, sale, or transfer of the servicing of the mortgage loan.

(3) MORTGAGE INSURANCE.—*The term “mortgage insurance” means insurance, including any mortgage guaranty insurance, against the nonpayment of, or default on, a mortgage or loan involved in a residential mortgage transaction, the premiums for which are paid by the borrower.*

(4) PRIVATE MORTGAGE INSURANCE.—*The term “private mortgage insurance” means mortgage insurance other than mortgage insurance made available under the National Housing Act, title 38 of the United States Code, or title V of the National Housing Act of 1949.*

[(2)] (5) SERVICER.—The term “servicer” means the person responsible for servicing of a loan (including the person who makes or holds a loan if such person also services the loan). The term does not include—

(A) * * *

* * * * *

[(3)] (6) SERVICING.—The term “servicing” means receiving any scheduled periodic payments from a borrower pursuant to the terms of any loan, including amounts for escrow accounts described in section 10, and making the payments of principal and interest and such other payments with respect to the amounts received from the borrower as may be required pursuant to the terms of the loan.

[(j)] (o) TRANSITION.—

(1) * * *

* * * * *

ESCROW ACCOUNTS

SEC. 10. (a) * * *

(b) NOTIFICATION OF SHORTAGE IN ESCROW ACCOUNT.—If the terms of any federally related mortgage loan require the borrower to make payments to the servicer (as the term is defined in [section 6(i)] *section 6(n)*) of the loan for deposit into an escrow account for the purpose of assuring payment of taxes, insurance premiums, and other charges with respect to the property, the servicer shall notify the borrower not less than annually of any shortage of funds in the escrow account.

* * * * *

PROHIBITION OF FEES FOR PREPARATION OF TRUTH-IN-LENDING,
UNIFORM SETTLEMENT, AND ESCROW ACCOUNT STATEMENTS

SEC. 12. No fee shall be imposed or charge made upon any other person (as a part of settlement costs or otherwise) by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a mobile home), or by a servicer (as the term is defined under [section 6(i)] *section 6(n)*), for or on account of the preparation and submission by such lender or servicer of the statement or statements required (in connection with such loan) by sections 4 and 10(c) of this Act or by the Truth in Lending Act.

* * * * *

