

103^D CONGRESS
1ST SESSION

H. R. 27

To amend the Real Estate Settlement Procedures Act of 1974 to reflect changes in the mortgage servicing industry and the availability of improved technology to escrow agents, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

JANUARY 5, 1993

Mr. GONZALEZ (for himself, Mr. SCHUMER, Mr. FRANK of Massachusetts, Mr. KENNEDY, Mr. MFUME, and Mr. RUSH) introduced the following bill; which was referred to the Committee on Banking, Finance and Urban Affairs

APRIL 22, 1993

Additional sponsors: Mr. GUTIERREZ, Mr. TOWNS, Mr. DE LUGO, Mr. WATT, Mr. BARRETT of Wisconsin, Mr. BLACKWELL, Mrs. MEEK, Mr. FROST, and Mr. GENE GREEN of Texas.

A BILL

To amend the Real Estate Settlement Procedures Act of 1974 to reflect changes in the mortgage servicing industry and the availability of improved technology to escrow agents, and for other purposes.

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 “Escrow Account Re-
5 form Act of 1993”.

1 **SEC. 2. LIMITATION OF PAYMENTS INTO ESCROW AC-**
2 **COUNTS.**

3 (a) PAYMENTS AT SETTLEMENT.—

4 (1) IN GENERAL.—Section 10(a)(1) of the Real
5 Estate Settlement Procedures Act of 1974 (12
6 U.S.C. 2609(a)(1)) is amended by striking “, plus
7 one-sixth” and all that follows through “twelve-
8 month period”.

9 (2) EFFECTIVE DATE.—The amendment under
10 paragraph (1) shall be made and shall take effect
11 upon the expiration of the 1-year period beginning
12 on the date of the enactment of this Act.

13 (b) REGULAR MONTHLY PAYMENTS.—

14 (1) IN GENERAL.—Section 10(a) of the Real
15 Estate Settlement Procedures Act of 1974 (12
16 U.S.C. 2609(a)) is amended by adding at the end
17 the following new undesignated paragraphs:

18 “Notwithstanding paragraphs (1) and (2) and any
19 mortgage agreement, each lender or servicer maintaining
20 any such escrow account shall provide that, not less than
21 once during each annual escrow period, the balance in
22 each such escrow account shall equal an amount not great-
23 er than the amount equal to one-sixth of the sum of the
24 total amount of taxes, insurance premiums, and other
25 charges anticipated to be paid during such annual escrow

1 period (or such lesser amount as provided in the mortgage
2 agreement or other mortgage instrument).

3 “For 12 consecutive calendar months (the first such
4 month being the month in which the first installment pay-
5 ment under the mortgage is due), an amount in each such
6 month not exceeding $\frac{1}{72}$ of the estimated total amount
7 of taxes, insurance premiums, and other charges which are
8 reasonably anticipated to be paid on dates during the an-
9 nual escrow period may be collected by the lender as a
10 sum in excess of the amount sufficient to pay such taxes,
11 insurance premiums, and other charges during the annual
12 period.”.

13 (2) APPLICABILITY.—The amendment made by
14 paragraph (1) shall apply to any annual escrow pe-
15 riod (as such term is defined in section 10(h) of the
16 Real Estate Settlement Procedures Act of 1974, as
17 amended by this Act) for a federally related mort-
18 gage loan that begins after the expiration of the 1-
19 year period beginning on date of the enactment of
20 this Act.

21 (c) COVERAGE OF SERVICERS.—Section 10(a) of the
22 Real Estate Settlement Procedures Act of 1974 (12
23 U.S.C. 2609(a)) is amended—

1 (1) in the matter preceding paragraph (1), by
2 inserting “or servicer (as the term is defined in sec-
3 tion 6(i))” after “lender”; and

4 (2) by inserting “or servicer” after “lender”
5 each place it appears in paragraphs (1) and (2).

6 **SEC. 3. INTEREST ON AMOUNTS IN ESCROW ACCOUNTS.**

7 (a) IN GENERAL.—Section 10 of the Real Estate Set-
8 tlement Procedures Act of 1974 (12 U.S.C. 2609) is
9 amended by adding at the end the following new sub-
10 section:

11 “(e) INTEREST ON AMOUNTS IN ESCROW AC-
12 COUNTS.—Any lender or servicer that establishes or main-
13 tains an escrow account in connection with a federally re-
14 lated mortgage loan shall pay interest on the balance in
15 the escrow account at an annual rate of not less than the
16 current passbook savings rate, as determined by the Sec-
17 retary (in the same manner determined for purposes of
18 determining family annual income under title I of the
19 United States Housing Act of 1937). Interest accrued
20 under this subsection shall be payable annually, except
21 that any amounts accrued upon termination of an escrow
22 account shall be payable upon the termination of the ac-
23 count. The Secretary shall, by regulation, provide for the
24 manner and timing of payment of interest accrued under

1 this section to the borrower or the account of the bor-
2 rower.”.

3 (b) APPLICABILITY.—The amendment made by sub-
4 section (a) shall apply to any escrow account (in connec-
5 tion with a federally related mortgage loan) that is estab-
6 lished after the expiration of the 1-year period beginning
7 on the date of the enactment of this Act.

8 **SEC. 4. OPTION OF BORROWER TO TERMINATE ESCROW**
9 **ACCOUNT.**

10 (a) IN GENERAL.—Section 10 of the Real Estate Set-
11 tlement Procedures Act of 1974 (12 U.S.C. 2609), as
12 amended by section 3 of this Act, is further amended by
13 adding at the end the following new subsection:

14 “(f) BORROWER ASSUMPTION OF ESCROW ACCOUNT
15 RESPONSIBILITY.—Any borrower in connection with a
16 federally related mortgage loan for which less than 80 per-
17 cent of the original principal obligation under the loan re-
18 mains outstanding may terminate any escrow account for
19 the loan by submitting to the lender or servicer of the loan
20 a statement certifying that the borrower agrees to make
21 timely payments of all taxes, insurance premiums, and
22 other charges paid from the escrow account. Notwith-
23 standing subsection (a) or any mortgage agreement, a
24 lender or servicer may not require the establishment or
25 maintenance of any escrow account for any federally relat-

1 ed mortgage loan for which the escrow account is termi-
2 nated under this subsection.”.

3 (b) EFFECTIVE DATE.—The amendment under sub-
4 section (a) shall be made and shall take effect upon the
5 expiration of the 180-day period beginning on the date of
6 the enactment of this Act.

7 **SEC. 5. ENFORCEMENT OF BORROWER RIGHTS.**

8 (a) CIVIL MONEY PENALTIES.—Section 10(d) of the
9 Real Estate Settlement Procedures Act of 1974 (12
10 U.S.C. 2609(d)) is amended—

11 (1) in paragraph (1)—

12 (A) by striking “failure to submit a state-
13 ment to a borrower as required under sub-
14 section (c)” and inserting “failure by a lender
15 or servicer to comply with the provisions of this
16 section”; and

17 (B) by striking “failing to submit the
18 statement” and inserting “failing to comply”;
19 and

20 (2) in paragraph (2), by striking “the require-
21 ment to submit the statement” and inserting “a pro-
22 vision of this section”.

23 (b) ACTIONS.—Section 10 of the Real Estate Settle-
24 ment Procedures Act of 1974 (12 U.S.C. 2609), as

1 amended by sections 3 and 4 of this Act, is further amend-
2 ed by adding at the end the following new subsection:

3 “(g) ACTIONS TO ENFORCE BORROWER RIGHTS.—

4 “(1) DAMAGES AND COSTS.—Whoever fails to
5 comply with any provision of this section shall be lia-
6 ble to the borrower for each such failure in the fol-
7 lowing amounts:

8 “(A) INDIVIDUALS.—In the case of any ac-
9 tion by an individual, an amount equal to the
10 sum of—

11 “(i) any actual or incidental damages
12 to the borrower as a result of the failure;
13 and

14 “(ii) in the case of a pattern or prac-
15 tice of noncompliance with the provisions
16 of this section, any punitive damages as
17 the court may allow, in an amount not to
18 exceed \$10,000.

19 “(B) CLASS ACTIONS.—In the case of a
20 class action, an amount equal to the sum of—

21 “(i) any actual or incidental damages
22 to each of the borrowers in the class as a
23 result of the failure; and

24 “(ii) in the case of a pattern or prac-
25 tice of noncompliance with the provisions

1 of this section, any punitive damages as
2 the court may allow.

3 “(2) ATTORNEYS FEES.—In any action pursu-
4 ant to this section, the court shall award to the pre-
5 vailing party the court costs of the action together
6 with reasonable attorneys fees.”.

7 **SEC. 6. DEFINITIONS.**

8 Section 10 of the Real Estate Settlement Procedures
9 Act of 1974 (12 U.S.C. 2609), as amended by sections
10 3, 4, and 5 of this Act, is further amended by adding at
11 the end the following new subsection:

12 “(h) DEFINITIONS.—For purposes of this section:

13 “(1) The term ‘annual escrow period’ means a
14 period of 12 consecutive calendar months occurring
15 during the term of a federally related mortgage loan.
16 The annual escrow period beginning in each cal-
17 endar year shall begin with the calendar month dur-
18 ing which the first installment payment under the
19 mortgage was due.

20 “(2) The term ‘balance’, with respect to any es-
21 crow account, means the total of any amounts re-
22 maining in the escrow account, irrespective of the
23 purpose or manner in which such amounts were de-
24 posited or are to be used.”.

1 **SEC. 7. JURISDICTION OF COURTS.**

2 Section 16 of the Real Estate Settlement Procedures
3 Act of 1974 (12 U.S.C. 2614) is amended—

4 (1) by inserting “(a) KICKBACK AND TITLE
5 COMPANY VIOLATIONS.—” after “SEC. 16.”; and

6 (2) by adding at the end the following new sub-
7 section:

8 “(b) ESCROW ACCOUNT VIOLATIONS.—Any action
9 brought pursuant to the provisions of section 10 may be
10 brought in the United States district court or in any other
11 court of competent jurisdiction, for the district in which
12 the property involved is located or where the violation is
13 alleged to have occurred, within 3 years from the date that
14 the borrower under the federally related mortgage loan
15 first had actual knowledge of the violation. Actions pursu-
16 ant to section 10 may be brought by the borrower, the
17 Secretary, the Attorney General of any State, or the insur-
18 ance commissioner of any State.”.

19 **SEC. 8. STUDY OF STANDARD ESCROW ACCOUNT MANAGE-**
20 **MENT PROCEDURES.**

21 (a) IN GENERAL.—The Secretary of Housing and
22 Urban Development shall conduct a study of the accrual
23 and disbursement dates for taxes, insurance premiums,
24 and other charges under escrow accounts maintained by
25 lenders and servicers in connection with federally related
26 mortgage loans, procedures regarding shortages and sur-

1 plus amounts in such escrow accounts, and the impact and
2 treatment of inflation with respect to such accounts, to
3 determine the feasibility of requiring standard procedures
4 for managing such escrow accounts.

5 (b) DEFINITIONS.—For purposes of this section—

6 (1) the term “accrual date” means, with respect
7 to taxes, insurance premiums, and other charges to
8 escrow accounts, the date on which the amount for
9 a charge is required to be deposited in an escrow ac-
10 count maintained for payment of such charges; and

11 (2) the term “disbursement date” means, with
12 respect to taxes, insurance premiums, and other
13 charges to escrow accounts, the date on which the
14 amount of a charge is withdrawn from an escrow ac-
15 count maintained for payment of such charges.

16 (c) REPORT.—The Secretary of Housing and Urban
17 Development shall submit to the Congress a report regard-
18 ing the results of the study under subsection (a), not later
19 than June 30, 1993. The report shall include the following
20 information:

21 (1) A determination of the overall cost to lend-
22 ers and servicers of converting accounting proce-
23 dures used for escrow accounts from single item
24 analysis to an aggregate analysis procedure.

1 (2) A determination of the feasibility of estab-
2 lishing an accrual date for each charge to an escrow
3 account that occurs 30 days before the disbursement
4 date for the charge.

5 (3) A determination of (A) the feasibility of
6 identifying the disbursement dates for various State
7 and local tax collection agencies throughout the
8 United States and (B) any cost to the Secretary of
9 Housing and Urban Development of issuing a list of
10 such disbursement dates on an annual basis.

11 (4) A description and comparison of various ac-
12 counting methods for estimating the annual percent-
13 age increase in property taxes for a property secur-
14 ing a federally related mortgage loan.

15 (5) An examination of mortgage agreements
16 and a determination of the extent to which such
17 agreements permit any increase in the amounts re-
18 quired to be deposited by a borrower upon transfer
19 of the servicing rights for the mortgage loan.

20 (6) A determination of the extent and frequency
21 of deficiencies of amounts in escrow accounts and a
22 description and comparison of the various proce-
23 dures used to remedy such deficiencies.

24 (7) A description of the various procedures used
25 by State and local tax authorities and lenders and

1 servicers in increasing tax charges and collecting re-
2 lated amounts for escrow accounts.

3 (8) A recommendation regarding the feasibility
4 of requiring standard procedures for management of
5 escrow accounts.

6 (9) Any other information relating to the study
7 conducted under subsection (a) that the Secretary
8 considers appropriate.

9 **SEC. 9. REGULATIONS.**

10 (a) REQUIREMENT.—Not later than the expiration of
11 the 180-day period beginning on the date of the enactment
12 of this Act, the Secretary of Housing and Urban Develop-
13 ment shall issue any proposed regulations necessary to
14 carry out this Act and the amendments made by this Act.
15 Not later than the expiration of the 90-day period begin-
16 ning on the expiration of such 180-day period, the Sec-
17 retary of Housing and Urban Development shall issue
18 final regulations to carry out this Act and the amendments
19 made by this Act. The regulations issued pursuant to this
20 section shall be subject to section 553 of title 5, United
21 States Code.

22 (b) RULE OF CONSTRUCTION.—Any failure by the
23 Secretary to issue any regulations required under sub-
24 section (a) shall not affect the effectiveness of the provi-
25 sions of this Act or of the amendments made by this Act.

