

COMMUNITY INSTITUTION MORTGAGE RELIEF ACT OF
2017

NOVEMBER 30, 2017.—Committed to the Committee of the Whole House on the
State of the Union and ordered to be printed

Mr. HENSARLING, from the Committee on Financial Services,
submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H.R. 3971]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 3971) to amend the Truth in Lending Act and the Real Estate Settlement Procedures Act of 1974 to modify the requirements for community financial institutions with respect to certain rules relating to mortgage loans, and for other purposes, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

Introduced by Representative Claudia Tenney on October 5, 2017, H.R. 3971, the “Community Institution Mortgage Relief Act of 2017” amends the Truth in Lending Act (TILA) to direct the Consumer Financial Protection Bureau (CFPB) to exempt from certain escrow or impound requirements a loan secured by a first lien on a consumer’s principal dwelling if the loan is held by a creditor with assets of \$25 billion or less. The CFPB must also provide either exemptions to, or adjustments for, the mortgage loan servicing and escrow account administration requirements of the Real Estate Settlement Procedures Act of 1974 (RESPA) for servicers of 30,000 or fewer mortgage loans.

BACKGROUND AND NEED FOR LEGISLATION

The goal of H.R. 3971 is to preserve consumer choice in the mortgage marketplace by exempting smaller community financial institutions and mortgage servicers from the burdensome regulatory compliance and scrutiny of expanded escrow and mortgage servicing requirements which would otherwise deter those same institutions from operating in the mortgage marketplace.

Under the implementing regulation of TILA, Regulation Z requires creditors to establish and maintain escrow accounts for at least one year after it originates a higher-priced mortgage loan secured by a first lien on a principal residence. Title XIV, Section 1461 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”)(Pub. Law No. 111–203) also establishes a minimum 5-year period for which escrows must be held for higher-priced mortgage loans, creates a rate threshold to determine whether escrow accounts are required for loans whose principal amounts exceed the maximum eligible for purchase by Fannie Mae and Freddie Mac (commonly referred to as “jumbo loans”), and adds disclosure requirements concerning escrow accounts.

The Dodd-Frank Act also imposes certain new requirements related to mortgage servicing. Section 1463 of the Dodd-Frank Act prohibits certain acts and practices by servicers of federally related mortgage loans, including, for example, a prohibition on obtaining force-placed hazard insurance, unless certain conditions are met; charging fees for responding to valid qualified written requests; failing to take timely action to respond to a borrower’s requests; failing to respond within 10 business days to a request from a borrower to provide information about the owner or assignee of a loan; or failing to comply with any other obligation found by the CFPB, by regulation, to be appropriate to carry out the consumer protection purposes of the Dodd-Frank Act.

On January 10, 2013, the CFPB released a final rule to expand that timeframe to at least five years, and defined higher-priced mortgages as loans on principal dwellings whose annual percentage rate exceeds the average prime offer rate by:

- 1.5 percent for loans secured by a first lien that do not exceed the limit in effect;
- 2.5 percent for loans secured by a first lien that do exceed the limit in effect; or
- 3.5 percent for loans secured by a subordinate lien.

The CFPB’s rule provides an exemption from the escrow requirement to creditors that operate predominantly in counties that are rural or underserved, which the Bureau will list annually on its website. Eligible creditors are those that:

- (1) Made more than 50 percent of their first-lien covered transactions in rural or underserved counties during the preceding calendar year;
- (2) Together with all affiliates, extended 500 or fewer first-lien covered transactions in the preceding calendar year;
- (3) Have total assets that are less than \$2 billion, adjusted annually for inflation; and
- (4) Together with all affiliates, do not maintain escrow accounts for any extensions of consumer credit that they currently service through at least the second installment due date.

However, creditors must establish escrow accounts at consummation for any mortgage that is at that time subject to a forward commitment to be purchased by an investor that does not itself qualify for the exemption.

The CFPB's rule also exempts: (1) transactions secured by shares in a cooperative; (2) transactions to finance the initial construction of a dwelling; (3) temporary or "bridge" loans with a loan term of twelve months or less; and (4) reverse mortgage transactions.

But the CFPB's expansion of Regulation Z's escrow requirements and guidance on escrow and mortgage servicing requirements are overly burdensome for community financial institutions. These smaller lenders do not engage in widespread sub-prime lending, if at all, and often hold the liability for the term of the loan, commonly referred to as holding a loan "in portfolio."

When a loan is held in portfolio, an escrow account is unnecessary because the lender has every incentive to protect its collateral by ensuring that taxes and insurance premiums are paid in full. The rule also presents a problem of scale for community financial institutions, which do not have the internal human or financial resources to create and maintain escrow accounts. The burdensome and expensive escrow requirements promulgated by the CFPB forces small lenders to make difficult choices: pass the increased costs to consumers as part of the mortgage process, or exit the mortgage market altogether. Neither of these options benefit or protect consumers.

To remedy this regulatory burden, H.R. 3971 amends TILA to direct the CFPB to exempt from certain escrow or impound requirements a loan secured by a first lien on a consumer's principal dwelling if the loan is held by a creditor with assets of \$25 billion or less. The CFPB must also provide either exemptions to, or adjustments from, the RESPA mortgage loan servicing and escrow account administration requirements for servicers of 30,000 or fewer mortgage loans.

This legislation provides necessary regulatory relief for small institutions while appropriately balancing consumer protections. This bill is critical to preserve community banks and credit unions in the mortgage lending business in local communities and prevent further industry consolidation. It also ensures that consumers continue to have various credit choices and allow smaller community institutions to enter the mortgage market without being deterred by the high cost of regulatory compliance. The increase in the small servicer exemption threshold will better delineate small servicers from the large servicers, and give credit unions and community banks greater flexibility to ensure that more of their customers can purchase or refinance their home.

HEARINGS

The Committee on Financial Services held a hearing examining matters relating to H.R. 3971 on April 26, 2017 and April 28, 2017.

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on October 11, 2017, and October 12, 2017, and ordered H.R. 3971 to be reported favorably to the House without amendment by a recorded

vote of 41 yeas to 19 nays (Record vote no. FC-82), a quorum being present.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. The sole recorded vote was on a motion by Chairman Hensarling to report the bill favorably to the House without amendment. The motion was agreed to by a recorded vote of 41 yeas to 19 nays (Record vote no. FC-82), a quorum being present.

Record vote no. FC-82

Representative	Yea	Nay	Present	Representative	Yea	Nay	Present
Mr. Hensarling	X			Ms. Maxine Waters (CA)		X	
Mr. McHenry	X			Mrs. Carolyn B. Maloney (NY)		X	
Mr. King	X			Ms. Velázquez		X	
Mr. Royce (CA)	X			Mr. Sherman	X		
Mr. Lucas	X			Mr. Meeks		X	
Mr. Pearce	X			Mr. Capuano		X	
Mr. Posey	X			Mr. Clay		X	
Mr. Luetkemeyer	X			Mr. Lynch		X	
Mr. Huizenga	X			Mr. David Scott (GA)	X		
Mr. Duffy	X			Mr. Al Green (TX)		X	
Mr. Stivers	X			Mr. Cleaver		X	
Mr. Hultgren	X			Ms. Moore		X	
Mr. Ross	X			Mr. Ellison		X	
Mr. Pittenger	X			Mr. Perlmutter	X		
Mrs. Wagner	X			Mr. Himes		X	
Mr. Barr	X			Mr. Foster		X	
Mr. Rothfus	X			Mr. Kildee		X	
Mr. Messer	X			Mr. Delaney	X		
Mr. Tipton	X			Ms. Sinema	X		
Mr. Williams	X			Mrs. Beatty		X	
Mr. Poliquin	X			Mr. Heck		X	
Mrs. Love	X			Mr. Vargas		X	
Mr. Hill	X			Mr. Gottheimer	X		
Mr. Emmer	X			Mr. Gonzalez (TX)	X		
Mr. Zeldin	X			Mr. Crist		X	
Mr. Trott	X			Mr. Kihuen		X	
Mr. Loudermilk	X						
Mr. Mooney (WV)	X						
Mr. MacArthur	X						
Mr. Davidson	X						
Mr. Budd	X						
Mr. Kustoff (TN)	X						
Ms. Tenney	X						
Mr. Hollingsworth	X						

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, 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.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee states that H.R. 3971 will reduce regulatory burdens while appropriately balancing consumer protections by creating a legal safe harbor from escrow requirements for community financial institutions in certain circumstances and by providing regulatory relief for servicers that annually service 30,000 or fewer mortgage loans.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, November 30, 2017.

Hon. JEB HENSARLING,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 3971, the Community Institution Mortgage Relief Act of 2017.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Stephen Rabent.

Sincerely,

MARK P. HADLEY
(For Keith Hall).

Enclosure.

H.R. 3971—Community Institution Mortgage Relief Act of 2017

Under current law, most mortgage lenders must establish escrow accounts to pay property taxes and certain insurance premiums for properties that secure “high-priced mortgages”—those that have interest rates exceeding certain thresholds. H.R. 3971 would amend the Truth in Lending Act to exempt a lender from the requirement

to hold those escrow funds if that lender has consolidated assets of \$25 billion or less and if it holds the mortgage on its balance sheet for three years from the date of origination. H.R. 3971 also would direct the Bureau of Consumer Financial Protection (CFPB) to exempt mortgage servicers from certain requirements related to, among other things, administering escrow accounts if they service 30,000 or fewer mortgage loans annually.

Using information from CFPB, CBO estimates that enacting H.R. 3971 would increase direct spending by less than \$500,000 for CFPB to update its guidance documents. Because the bill affects direct spending, pay-as-you-go procedures apply. Enacting the bill would not affect revenues.

CBO estimates that enacting H.R. 3971 would not increase net direct spending or on-budget deficits in any of the four consecutive 10-year periods beginning in 2028.

H.R. 3971 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act.

The CBO staff contact for this estimate is Stephen Rabent. The estimate was approved by H. Samuel Papenfuss, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

This information is provided in accordance with section 423 of the Unfunded Mandates Reform Act of 1995.

The Committee has determined that the bill does not contain Federal mandates on the private sector. The Committee has determined that the bill does not impose a Federal intergovernmental mandate on State, local, or tribal governments.

ADVISORY COMMITTEE STATEMENT

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

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

With respect to clause 9 of rule XXI of the Rules of the House of Representatives, the Committee has carefully reviewed the provisions of the bill and states that the provisions of the bill do not contain any congressional earmarks, limited tax benefits, or limited tariff benefits within the meaning of the rule.

DUPLICATION OF FEDERAL PROGRAMS

In compliance with clause 3(c)(5) of rule XIII of the Rules of the House of Representatives, the Committee states that no provision of the bill establishes or reauthorizes: (1) a program of the Federal Government known to be duplicative of another Federal program; (2) a program included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public

Law 111–139; or (3) a program related to a program identified in the most recent Catalog of Federal Domestic Assistance, published pursuant to the Federal Program Information Act (Pub. L. No. 95–220, as amended by Pub. L. No. 98–169).

DISCLOSURE OF DIRECTED RULEMAKING

Pursuant to section 3(i) of H. Res. 5, (115th Congress), the following statement is made concerning directed rulemakings: The Committee states that the bill requires one directed rulemaking.

The rulemaking directs the Bureau of Consumer Financial Protection to provide exemptions to, or adjustments for, the provisions of Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) for a servicer that annually services 30,000 or fewer mortgage loans. Doing so will reduce regulatory burdens on community financial institutions while appropriately balancing consumer protections.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Short title

This section cites H.R. 3971 as the “Community Institution Mortgage Relief Act of 2017”

Section 2. Community financial institution mortgage relief

This section amends Section 129D of the Truth in Lending Act to create a legal safe harbor from the requirement that a creditor must establish an escrow or impound account for the payment of taxes and insurance in connection with the consummation of a mortgage loan. Under the safe harbor, a creditor is not in violation of the escrow requirement if the creditor has consolidated assets of \$25 billion or less and holds the loan on its balance sheet (i.e., in portfolio) for three years from the date of origination.

If a creditor transfers a loan due to bankruptcy, acquisition, or by a supervisory act or recommendation from a state or federal regulator, the creditor is deemed to have complied with the three year portfolio requirement. This section also requires the CFPB, by regulation, to provide exemptions to, or adjustments for, mortgage servicer requirements under Section 6 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2605) for servicers that annually service 30,000 or fewer mortgage loans.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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, and existing law in which no change is proposed is shown in roman):

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) 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,

and existing law in which no change is proposed is shown in roman):

TRUTH IN LENDING ACT

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**TITLE I—CONSUMER CREDIT COST
DISCLOSURE**

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CHAPTER 2—CREDIT TRANSACTIONS

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§ 129D. Escrow or impound accounts relating to certain consumer credit transactions

(a) **IN GENERAL.**—Except as provided in subsection (b), (c), (d), or (e), a creditor, in connection with the consummation of a consumer credit transaction secured by a first lien on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, shall establish, before the consummation of such transaction, an escrow or impound account for the payment of taxes and hazard insurance, and, if applicable, flood insurance, mortgage insurance, ground rents, and any other required periodic payments or premiums with respect to the property or the loan terms, as provided in, and in accordance with, this section.

(b) **WHEN REQUIRED.**—No impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property may be required as a condition of a real property sale contract or a loan secured by a first deed of trust or mortgage on the principal dwelling of the consumer, other than a consumer credit transaction under an open end credit plan or a reverse mortgage, except when—

(1) any such impound, trust, or other type of escrow or impound account for such purposes is required by Federal or State law;

(2) a loan is made, guaranteed, or insured by a State or Federal governmental lending or insuring agency;

(3) the transaction is secured by a first mortgage or lien on the consumer's principal dwelling having an original principal obligation amount that—

(A) does not exceed the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), and the annual percentage rate will exceed the average prime offer rate as defined in section 129C by 1.5 or more percentage points; or

(B) exceeds the amount of the maximum limitation on the original principal obligation of mortgage in effect for a residence of the applicable size, as of the date such interest rate set, pursuant to the sixth sentence of section

- 305(a)(2) the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454(a)(2)), and the annual percentage rate will exceed the average prime offer rate as defined in section 129C by 2.5 or more percentage points; or
- (4) so required pursuant to regulation.
- (c) EXEMPTIONS.—The **Board** *Bureau* may, by regulation, exempt from the requirements of subsection (a) a creditor that—
- (1) operates in rural or underserved areas;
 - (2) together with all affiliates, has total annual mortgage loan originations that do not exceed a limit set by the **Board** *Bureau*;
 - (3) retains its mortgage loan originations in portfolio; and
 - (4) meets any asset size threshold and any other criteria the **Board** *Bureau* may establish, consistent with the purposes of this subtitle.
- (d) DURATION OF MANDATORY ESCROW OR IMPOUND ACCOUNT.—An escrow or impound account established pursuant to subsection (b) shall remain in existence for a minimum period of 5 years, beginning with the date of the consummation of the loan, unless and until—
- (1) such borrower has sufficient equity in the dwelling securing the consumer credit transaction so as to no longer be required to maintain private mortgage insurance;
 - (2) such borrower is delinquent;
 - (3) such borrower otherwise has not complied with the legal obligation, as established by rule; or
 - (4) the underlying mortgage establishing the account is terminated.
- (e) LIMITED EXEMPTIONS FOR LOANS SECURED BY SHARES IN A COOPERATIVE OR IN WHICH AN ASSOCIATION MUST MAINTAIN A MASTER INSURANCE POLICY.—Escrow accounts need not be established for loans secured by shares in a cooperative. Insurance premiums need not be included in escrow accounts for loans secured by dwellings or units, where the borrower must join an association as a condition of ownership, and that association has an obligation to the dwelling or unit owners to maintain a master policy insuring the dwellings or units.
- (f) CLARIFICATION ON ESCROW ACCOUNTS FOR LOANS NOT MEETING STATUTORY TEST.—For mortgages not covered by the requirements of subsection (b), no provision of this section shall be construed as precluding the establishment of an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to the property—
- (1) on terms mutually agreeable to the parties to the loan;
 - (2) at the discretion of the lender or servicer, as provided by the contract between the lender or servicer and the borrower;
- or
- (3) pursuant to the requirements for the escrowing of flood insurance payments for regulated lending institutions in section 102(d) of the Flood Disaster Protection Act of 1973.
- (g) ADMINISTRATION OF MANDATORY ESCROW OR IMPOUND ACCOUNTS.—
- (1) IN GENERAL.—Except as may otherwise be provided for in this title or in regulations prescribed by the **Board** *Bureau*, escrow or impound accounts established pursuant to subsection

(b) shall be established in a federally insured depository institution or credit union.

(2) ADMINISTRATION.—Except as provided in this section or regulations prescribed under this section, an escrow or impound account subject to this section shall be administered in accordance with—

(A) the Real Estate Settlement Procedures Act of 1974 and regulations prescribed under such Act;

(B) the Flood Disaster Protection Act of 1973 and regulations prescribed under such Act; and

(C) the law of the State, if applicable, where the real property securing the consumer credit transaction is located.

(3) APPLICABILITY OF PAYMENT OF INTEREST.—If prescribed by applicable State or Federal law, each creditor shall pay interest to the consumer on the amount held in any impound, trust, or escrow account that is subject to this section in the manner as prescribed by that applicable State or Federal law.

(4) PENALTY COORDINATION WITH RESPA.—Any action or omission on the part of any person which constitutes a violation of the Real Estate Settlement Procedures Act of 1974 or any regulation prescribed under such Act for which the person has paid any fine, civil money penalty, or other damages shall not give rise to any additional fine, civil money penalty, or other damages under this section, unless the action or omission also constitutes a direct violation of this section.

(h) DISCLOSURES RELATING TO MANDATORY ESCROW OR IMPOUND ACCOUNT.—In the case of any impound, trust, or escrow account that is required under subsection (b), the creditor shall disclose by written notice to the consumer at least 3 business days before the consummation of the consumer credit transaction giving rise to such account or in accordance with timeframes established in prescribed regulations the following information:

(1) The fact that an escrow or impound account will be established at consummation of the transaction.

(2) The amount required at closing to initially fund the escrow or impound account.

(3) The amount, in the initial year after the consummation of the transaction, of the estimated taxes and hazard insurance, including flood insurance, if applicable, and any other required periodic payments or premiums that reflects, as appropriate, either the taxable assessed value of the real property securing the transaction, including the value of any improvements on the property or to be constructed on the property (whether or not such construction will be financed from the proceeds of the transaction) or the replacement costs of the property.

(4) The estimated monthly amount payable to be escrowed for taxes, hazard insurance (including flood insurance, if applicable) and any other required periodic payments or premiums.

(5) The fact that, if the consumer chooses to terminate the account in the future, the consumer will become responsible for the payment of all taxes, hazard insurance, and flood insurance, if applicable, as well as any other required periodic pay-

ments or premiums on the property unless a new escrow or impound account is established.

(6) Such other information as the [Board] *Bureau* determines necessary for the protection of the consumer.

(i) DEFINITIONS.—For purposes of this section, the following definitions shall apply:

(1) FLOOD INSURANCE.—The term “flood insurance” means flood insurance coverage provided under the national flood insurance program pursuant to the National Flood Insurance Act of 1968.

(2) HAZARD INSURANCE.—The term “hazard insurance” shall have the same meaning as provided for “hazard insurance”, “casualty insurance”, “homeowner’s insurance”, or other similar term under the law of the State where the real property securing the consumer credit transaction is located.

(j) DISCLOSURE NOTICE REQUIRED FOR CONSUMERS WHO WAIVE ESCROW SERVICES.—

(1) IN GENERAL.—If—

(A) an impound, trust, or other type of account for the payment of property taxes, insurance premiums, or other purposes relating to real property securing a consumer credit transaction is not established in connection with the transaction; or

(B) a consumer chooses, and provides written notice to the creditor or servicer of such choice, at any time after such an account is established in connection with any such transaction and in accordance with any statute, regulation, or contractual agreement, to close such account, the creditor or servicer shall provide a timely and clearly written disclosure to the consumer that advises the consumer of the responsibilities of the consumer and implications for the consumer in the absence of any such account.

(2) DISCLOSURE REQUIREMENTS.—Any disclosure provided to a consumer under paragraph (1) shall include the following:

(A) Information concerning any applicable fees or costs associated with either the non-establishment of any such account at the time of the transaction, or any subsequent closure of any such account.

(B) A clear and prominent statement that the consumer is responsible for personally and directly paying the non-escrowed items, in addition to paying the mortgage loan payment, in the absence of any such account, and the fact that the costs for taxes, insurance, and related fees can be substantial.

(C) A clear explanation of the consequences of any failure to pay non-escrowed items, including the possible requirement for the forced placement of insurance by the creditor or servicer and the potentially higher cost (including any potential commission payments to the servicer) or reduced coverage for the consumer in the event of any such creditor-placed insurance.

(D) Such other information as the [Board] *Bureau* determines necessary for the protection of the consumer.

(k) SAFE HARBOR FOR LOANS HELD BY SMALLER CREDITORS.—

(1) *IN GENERAL.*—A creditor shall not be in violation of subsection (a) with respect to a loan if—

(A) the creditor has consolidated assets of \$25,000,000 or less; and

(B) the creditor holds the loan on the balance sheet of the creditor for the 3-year period beginning on the date of the origination of the loan.

(2) *EXCEPTION FOR CERTAIN TRANSFERS.*—In the case of a creditor that transfers a loan to another person by reason of the bankruptcy or failure of the creditor, the purchase of the creditor, or a supervisory act or recommendation from a State or Federal regulator, the creditor shall be deemed to have complied with the requirement under paragraph (1)(B).

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REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

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SERVICING OF MORTGAGE LOANS AND ADMINISTRATION OF ESCROW ACCOUNTS

SEC. 6. (a) *DISCLOSURE TO APPLICANT RELATING TO ASSIGNMENT, SALE, OR TRANSFER OF LOAN SERVICING.*—Each person who makes a federally related mortgage loan shall disclose to each person who applies for the loan, at the time of application for the loan, whether the servicing of the loan may be assigned, sold, or transferred to any other person at any time while the loan is outstanding.

(b) *NOTICE BY TRANSFEROR OR LOAN SERVICING AT TIME OF TRANSFER.*—

(1) *NOTICE REQUIREMENT.*—Each servicer of any federally related mortgage loan shall notify the borrower in writing of any assignment, sale, or transfer of the servicing of the loan to any other person.

(2) *TIME OF NOTICE.*—

(A) *IN GENERAL.*—Except as provided under subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not less than 15 days before the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) *EXCEPTION FOR CERTAIN PROCEEDINGS.*—The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by—

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the

servicer (or an entity by which the servicer is owned or controlled).

(C) EXCEPTION FOR NOTICE PROVIDED AT CLOSING.—The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) CONTENTS OF NOTICE.—The notice required under paragraph (1) shall include the following information:

(A) The effective date of transfer of the servicing described in such paragraph.

(B) The name, address, and toll-free or collect call telephone number of the transferee servicer.

(C) A toll-free or collect call telephone number for (i) an individual employed by the transferor servicer, or (ii) the department of the transferor servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(D) The name and toll-free or collect call telephone number for (i) an individual employed by the transferee servicer, or (ii) the department of the transferee servicer, that can be contacted by the borrower to answer inquiries relating to the transfer of servicing.

(E) The date on which the transferor servicer who is servicing the mortgage loan before the assignment, sale, or transfer will cease to accept payments relating to the loan and the date on which the transferee servicer will begin to accept such payments.

(F) Any information concerning the effect the transfer may have, if any, on the terms of or the continued availability of mortgage life or disability insurance or any other type of optional insurance and what action, if any, the borrower must take to maintain coverage.

(G) A statement that the assignment, sale, or transfer of the servicing of the mortgage loan does not affect any term or condition of the security instruments other than terms directly related to the servicing of such loan.

(c) NOTICE BY TRANSFeree OF LOAN SERVICING AT TIME OF TRANSFER.—

(1) NOTICE REQUIREMENT.—Each transferee servicer to whom the servicing of any federally related mortgage loan is assigned, sold, or transferred shall notify the borrower of any such assignment, sale, or transfer.

(2) TIME OF NOTICE.—

(A) IN GENERAL.—Except as provided in subparagraphs (B) and (C), the notice required under paragraph (1) shall be made to the borrower not more than 15 days after the effective date of transfer of the servicing of the mortgage loan (with respect to which such notice is made).

(B) EXCEPTION FOR CERTAIN PROCEEDINGS.—The notice required under paragraph (1) shall be made to the borrower not more than 30 days after the effective date of assignment, sale, or transfer of the servicing of the mortgage

loan (with respect to which such notice is made) in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by—

- (i) termination of the contract for servicing the loan for cause;
- (ii) commencement of proceedings for bankruptcy of the servicer; or
- (iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(C) EXCEPTION FOR NOTICE PROVIDED AT CLOSING.—The provisions of subparagraphs (A) and (B) shall not apply to any assignment, sale, or transfer of the servicing of any mortgage loan if the person who makes the loan provides to the borrower, at settlement (with respect to the property for which the mortgage loan is made), written notice under paragraph (3) of such transfer.

(3) CONTENTS OF NOTICE.—Any notice required under paragraph (1) shall include the information described in subsection (b)(3).

(d) TREATMENT OF LOAN PAYMENTS DURING TRANSFER PERIOD.—During the 60-day period beginning on the effective date of transfer of the servicing of any federally related mortgage loan, a late fee may not be imposed on the borrower with respect to any payment on such loan and no such payment may be treated as late for any other purposes, if the payment is received by the transferor servicer (rather than the transferee servicer who should properly receive payment) before the due date applicable to such payment.

(e) DUTY OF LOAN SERVICER TO RESPOND TO BORROWER INQUIRIES.—

(1) NOTICE OF RECEIPT OF INQUIRY.—

(A) IN GENERAL.—If any servicer of a federally related mortgage loan receives a qualified written request from the borrower (or an agent of the borrower) for information relating to the servicing of such loan, the servicer shall provide a written response acknowledging receipt of the correspondence within 5 days (excluding legal public holidays, Saturdays, and Sundays) unless the action requested is taken within such period.

(B) QUALIFIED WRITTEN REQUEST.—For purposes of this subsection, a qualified written request shall be a written correspondence, other than notice on a payment coupon or other payment medium supplied by the servicer, that—

- (i) includes, or otherwise enables the servicer to identify, the name and account of the borrower; and
- (ii) includes a statement of the reasons for the belief of the borrower, to the extent applicable, that the account is in error or provides sufficient detail to the servicer regarding other information sought by the borrower.

(2) ACTION WITH RESPECT TO INQUIRY.—Not later than 30 days (excluding legal public holidays, Saturdays, and Sundays) after the receipt from any borrower of any qualified written re-

quest under paragraph (1) and, if applicable, before taking any action with respect to the inquiry of the borrower, the servicer shall—

(A) make appropriate corrections in the account of the borrower, including the crediting of any late charges or penalties, and transmit to the borrower a written notification of such correction (which shall include the name and telephone number of a representative of the servicer who can provide assistance to the borrower);

(B) after conducting an investigation, provide the borrower with a written explanation or clarification that includes—

(i) to the extent applicable, a statement of the reasons for which the servicer believes the account of the borrower is correct as determined by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower; or

(C) after conducting an investigation, provide the borrower with a written explanation or clarification that includes—

(i) information requested by the borrower or an explanation of why the information requested is unavailable or cannot be obtained by the servicer; and

(ii) the name and telephone number of an individual employed by, or the office or department of, the servicer who can provide assistance to the borrower.

(3) PROTECTION OF CREDIT RATING.—During the 60-day period beginning on the date of the servicer’s receipt from any borrower of a qualified written request relating to a dispute regarding the borrower’s payments, a servicer may not provide information regarding any overdue payment, owed by such borrower and relating to such period or qualified written request, to any consumer reporting agency (as such term is defined under section 603 of the Fair Credit Reporting Act).

(4) LIMITED EXTENSION OF RESPONSE TIME.—The 30-day period described in paragraph (2) may be extended for not more than 15 days if, before the end of such 30-day period, the servicer notifies the borrower of the extension and the reasons for the delay in responding.

(f) 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) INDIVIDUALS.—In the case of any action by an individual, an amount equal to the sum of—

(A) any actual damages to the borrower as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not to exceed \$2,000.

(2) CLASS ACTIONS.—In the case of a class action, an amount equal to the sum of—

(A) any actual damages to each of the borrowers in the class as a result of the failure; and

(B) any additional damages, as the court may allow, in the case of a pattern or practice of noncompliance with the requirements of this section, in an amount not greater than \$2,000 for each member of the class, except that the total amount of damages under this subparagraph in any class action may not exceed the lesser of—

(i) \$1,000,000; or

(ii) 1 percent of the net worth of the servicer.

(3) COSTS.—In addition to the amounts under paragraph (1) or (2), in the case of any successful action under this section, the costs of the action, together with any attorneys fees incurred in connection with such action as the court may determine to be reasonable under the circumstances.

(4) NONLIABILITY.—A transferor or transferee servicer shall not be liable under this subsection for any failure to comply with any requirement under this section if, within 60 days after discovering an error (whether pursuant to a final written examination report or the servicer's own procedures) and before the commencement of an action under this subsection and the receipt of written notice of the error from the borrower, the servicer notifies the person concerned of the error and makes whatever adjustments are necessary in the appropriate account to ensure that the person will not be required to pay an amount in excess of any amount that the person otherwise would have paid.

(g) 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. Any balance in any such account that is within the servicer's control at the time the loan is paid off shall be promptly returned to the borrower within 20 business days or credited to a similar account for a new mortgage loan to the borrower with the same lender.

(h) 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 regarding timing, content, and procedures for notification of the borrower.

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

(1) 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.

(2) 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) the Federal Deposit Insurance Corporation or the Resolution Trust Corporation, in connection with assets acquired, assigned, sold, or transferred pursuant to section 13(c) of the Federal Deposit Insurance Act or as receiver or conservator of an insured depository institution; and

(B) the Government National Mortgage Association, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Resolution Trust Corporation, or the Federal Deposit Insurance Corporation, in any case in which the assignment, sale, or transfer of the servicing of the mortgage loan is preceded by—

(i) termination of the contract for servicing the loan for cause;

(ii) commencement of proceedings for bankruptcy of the servicer; or

(iii) commencement of proceedings by the Federal Deposit Insurance Corporation or the Resolution Trust Corporation for conservatorship or receivership of the servicer (or an entity by which the servicer is owned or controlled).

(3) **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) **TRANSITION.**—

(1) **ORIGINATOR LIABILITY.**—A person who makes a federally related mortgage loan shall not be liable to a borrower because of a failure of such person to comply with subsection (a) with respect to an application for a loan made by the borrower before the regulations referred to in paragraph (3) take effect.

(2) **SERVICER LIABILITY.**—A servicer of a federally related mortgage loan shall not be liable to a borrower because of a failure of the servicer to perform any duty under subsection (b), (c), (d), or (e) that arises before the regulations referred to in paragraph (3) take effect.

(3) **REGULATIONS AND EFFECTIVE DATE.**—The Bureau shall establish any requirements necessary to carry out this section. Such regulations shall include the model disclosure statement required under subsection (a)(2).

(k) **SERVICER PROHIBITIONS.**—

(1) **IN GENERAL.**—A servicer of a federally related mortgage shall not—

(A) obtain force-placed hazard insurance unless there is a reasonable basis to believe the borrower has failed to comply with the loan contract’s requirements to maintain property insurance;

(B) charge fees for responding to valid qualified written requests (as defined in regulations which the Bureau of Consumer Financial Protection shall prescribe) under this section;

(C) fail to take timely action to respond to a borrower's requests to correct errors relating to allocation of payments, final balances for purposes of paying off the loan, or avoiding foreclosure, or other standard servicer's duties;

(D) fail to respond within 10 business days to a request from a borrower to provide the identity, address, and other relevant contact information about the owner or assignee of the loan; or

(E) fail to comply with any other obligation found by the Bureau of Consumer Financial Protection, by regulation, to be appropriate to carry out the consumer protection purposes of this Act.

(2) FORCE-PLACED INSURANCE DEFINED.—For purposes of this subsection and subsections (l) and (m), the term “force-placed insurance” means hazard insurance coverage obtained by a servicer of a federally related mortgage when the borrower has failed to maintain or renew hazard insurance on such property as required of the borrower under the terms of the mortgage.

(l) REQUIREMENTS FOR FORCE-PLACED INSURANCE.—A servicer of a federally related mortgage shall not be construed as having a reasonable basis for obtaining force-placed insurance unless the requirements of this subsection have been met.

(1) WRITTEN NOTICES TO BORROWER.—A servicer may not impose any charge on any borrower for force-placed insurance with respect to any property securing a federally related mortgage unless—

(A) the servicer has sent, by first-class mail, a written notice to the borrower containing—

(i) a reminder of the borrower's obligation to maintain hazard insurance on the property securing the federally related mortgage;

(ii) a statement that the servicer does not have evidence of insurance coverage of such property;

(iii) a clear and conspicuous statement of the procedures by which the borrower may demonstrate that the borrower already has insurance coverage; and

(iv) a statement that the servicer may obtain such coverage at the borrower's expense if the borrower does not provide such demonstration of the borrower's existing coverage in a timely manner;

(B) the servicer has sent, by first-class mail, a second written notice, at least 30 days after the mailing of the notice under subparagraph (A) that contains all the information described in each clause of such subparagraph; and

(C) the servicer has not received from the borrower any demonstration of hazard insurance coverage for the property securing the mortgage by the end of the 15-day period beginning on the date the notice under subparagraph (B) was sent by the servicer.

(2) SUFFICIENCY OF DEMONSTRATION.—A servicer of a federally related mortgage shall accept any reasonable form of written confirmation from a borrower of existing insurance coverage, which shall include the existing insurance policy number along with the identity of, and contact information for, the

insurance company or agent, or as otherwise required by the Bureau of Consumer Financial Protection.

(3) TERMINATION OF FORCE-PLACED INSURANCE.—Within 15 days of the receipt by a servicer of confirmation of a borrower’s existing insurance coverage, the servicer shall—

(A) terminate the force-placed insurance; and

(B) refund to the consumer all force-placed insurance premiums paid by the borrower during any period during which the borrower’s insurance coverage and the force-placed insurance coverage were each in effect, and any related fees charged to the consumer’s account with respect to the force-placed insurance during such period.

(4) CLARIFICATION WITH RESPECT TO FLOOD DISASTER PROTECTION ACT.—No provision of this section shall be construed as prohibiting a servicer from providing simultaneous or concurrent notice of a lack of flood insurance pursuant to section 102(e) of the Flood Disaster Protection Act of 1973.

(m) LIMITATIONS ON FORCE-PLACED INSURANCE CHARGES.—All charges, apart from charges subject to State regulation as the business of insurance, related to force-placed insurance imposed on the borrower by or through the servicer shall be bona fide and reasonable.

(n) SMALL SERVICER EXEMPTION.—*The Bureau shall, by regulation, provide exemptions to, or adjustments for, the provisions of this section for a servicer that annually services 30,000 or fewer mortgage loans, in order to reduce regulatory burdens while appropriately balancing consumer protections.*

* * * * *

MINORITY VIEWS

H.R. 3971, the “Community Institution Mortgage Relief Act,” would amend the Truth in Lending Act (TILA) and the Real Estate Settlement Procedures Act (RESPA) to adjust the size of two exemptions that the Consumer Financial Protection Bureau (Consumer Bureau) has already provided for smaller-sized institutions on escrow accounts for higher-priced mortgage loans and servicing requirements for small mortgage servicers.

Under H.R. 3971, escrow accounts would no longer be required for riskier, high-priced loans at institutions with less than \$25 billion in assets, a dramatic increase from the current \$2 billion asset threshold. The bill would also raise the “small servicer exemption” for increased notification requirements to consumers from servicers with 5,000 mortgage loans to those with 30,000 mortgage loans.

High-priced mortgage loans are essentially loans with higher interest rates that reflect riskier or subprime borrowers. H.R. 3971 would enable larger servicers, whose incentives are neither aligned with owners of the loans nor the borrowers, to potentially revive some of the abusive practices involved with predatory lending that contributed to the 2007–2009 financial crisis. Relatedly, escrow accounts are an important consumer protection mechanism that ensure that homeowners have funds for recurring homeownership-related expenses, such as property taxes and insurance. As such, these accounts are a crucial tool for some homeowners to reduce their risk of mortgage defaults by guaranteeing that the funds are available every month.

Furthermore, the Consumer Bureau has servicing rules that were designed to address the fact that large servicers, and especially servicers that serviced loans they did not own for an extended period of time, often do not adequately communicate with customers, or appropriately track paperwork. During the 2007–2009 financial crisis, this problem contributed to millions of unnecessary foreclosures and several billion dollar settlements for abusive and fraudulent business practices. The increase in the exemption under the bill would allow too many larger bank servicers to avoid important consumer safeguards.

For all of the reasons discussed above, we oppose H.R. 3971.

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