

REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION
1775 DUKE STREET, ALEXANDRIA, VA 22314

DATE: March 2001 **NO:** 01-RA-04

TO: All Federally-Insured Credit Unions

SUBJECT: Homeowners Protection Act (HOPA)

ENCL: (1) Title IV – Private Mortgage Insurance Cancellation and Termination
(2) Homeowners Protection Act of 1998

The Homeowner's Protection Act (HOPA), also known as the "PMI Cancellation Act," was passed in 1998, addressing the difficulties homeowners have experienced in canceling private mortgage insurance (PMI). It established provisions for the cancellation and termination of PMI, established disclosure and notification requirements, and required the return of unearned premiums. Prior to HOPA, homeowners had little recourse when lenders refused to cancel PMI. HOPA protects homeowners by prohibiting life of loan PMI for borrower-paid products, and it establishes uniform procedures for cancellation of PMI policies.

HOPA took effect on July 29, 1999. On December 27, 2000, President Clinton signed into law the American Homeownership and Economic Opportunity Act of 2000. Title IV of that act provides technical corrections and clarification to HOPA. The technical amendments and the original Homeowners Protection Act of 1998 are enclosed.

We encourage management officials and residential mortgage lending staff to review the requirements of HOPA and evaluate the credit union's policies and procedures for compliance.

Sincerely,

_____/S/_____
Dennis Dollar
Acting Chairman
National Credit Union Administration Board

Enclosures

TITLE IV--PRIVATE MORTGAGE INSURANCE CANCELLATION AND TERMINATION

SEC. 401. SHORT TITLE.

This title may be cited as the "Private Mortgage Insurance Technical Corrections and Clarification Act".

SEC. 402. CHANGES IN AMORTIZATION SCHEDULE.

(a) Treatment of Adjustable Rate Mortgages. The Homeowners Protection Act of 1998 ([12 U.S.C. 4901](#) et seq.) is amended--

(1) in section 2--

(A) in paragraph (2)(B)(i), by striking "amortization schedules" and inserting "the amortization schedule then in effect";

(B) in paragraph (16)(B), by striking "amortization schedules" and inserting "the amortization schedule then in effect";

(C) by redesignating paragraphs (6) through (16) (as amended by the preceding provisions of this paragraph) as paragraphs (8) through (18), respectively; and

(D) by inserting after paragraph (5) the following new paragraph:

"(6) Amortization schedule then in effect. The term 'amortization schedule then in effect' means, with respect to an adjustable rate mortgage, a schedule established at the time at which the residential mortgage transaction is consummated or, if such schedule has been changed or recalculated, is the most recent schedule under the terms of the note or mortgage, which shows--

"(A) the amount of principal and interest that is due at regular intervals to retire the principal balance and accrued interest over the remaining amortization period of the loan; and

"(B) the unpaid balance of the loan after each such scheduled payment is made."; and

(2) in section 3(f)(1)(B)(ii), by striking "amortization schedules" and inserting "the amortization schedule then in effect".

(b) Treatment of Balloon Mortgages. Paragraph (1) of section 2 of the Homeowners Protection Act of 1998 ([12 U.S.C. 4901](#)(1)) is amended by adding at the end the following new sentence: "A residential mortgage that (A) does not fully amortize over the term of the obligation, and (B) contains a conditional right to refinance or modify the unamortized principal at the maturity date of the term, shall be considered to be an adjustable rate mortgage for purposes of this Act."

(c) Treatment of Loan Modifications.

(1) In general. Section 3 of the Homeowners Protection Act of 1998 ([12 U.S.C. 4902](#)) is amended--

(A) by redesignating subsections (d) through (f) as subsections (e) through (g), respectively; and

(B) by inserting after subsection (c) the following new subsection:

"(d) Treatment of Loan Modifications. If a mortgagor and mortgagee (or holder of the mortgage) agree to a modification of the terms or conditions of a loan pursuant to a residential mortgage transaction, the cancellation date, termination date, or final termination shall be recalculated to reflect the modified terms and conditions of such loan."

(2) Conforming amendments. Section 4(a) of the Homeowners Protection Act of 1998 ([12 U.S.C. 4903](#)(a)) is amended--

(A) in paragraph (1)--

(i) in the matter preceding subparagraph (A), by striking "section 3(f)(1)" and inserting "section 3(g)(1)";

(ii) in subparagraph (A)(ii)(IV), by striking "section 3(f)" and inserting "section 3(g)"; and

(iii) in subparagraph (B)(iii), by striking "section 3(f)" and inserting "section 3(g)"; and

(B) in paragraph (2), by striking "section 3(f)(1)" and inserting "section 3(g)(1)".

SEC. 403. DELETION OF AMBIGUOUS REFERENCES TO RESIDENTIAL MORTGAGES.

(a) Termination of Private Mortgage Insurance. Section 3 of the Homeowners Protection Act of 1998 ([12 U.S.C. 4902](#)) is amended--

(1) in subsection (c), by inserting "on residential mortgage transactions" after "imposed"; and

(2) in subsection (g) (as so redesignated by the preceding provisions of this title)--

(A) in paragraph (1), in the matter preceding subparagraph (A), by striking "mortgage or";

(B) in paragraph (2), by striking "mortgage or"; and

(C) in paragraph (3), by striking "mortgage or" and inserting "residential mortgage or residential".

(b) Disclosure Requirements. Section 4 of the Homeowners Protection Act of 1998 ([12 U.S.C. 4903](#)(a)) is amended--

(1) in subsection (a)--

(A) in paragraph (1)--

(i) by striking "mortgage or" the first place it appears; and

(ii) by striking "mortgage or" the second place it appears and inserting "residential"; and

(B) in paragraph (2), by striking "mortgage or" and inserting "residential";

(2) in subsection (c), by striking "paragraphs (1)(B) and (3) of subsection (a)" and inserting "subsection (a)(3)"; and

(3) in subsection (d), by inserting before the period at the end the following: ", which disclosures shall relate to the mortgagor's rights under this Act".

(c) Disclosure Requirements for Lender-Paid Mortgage Insurance. Section 6 of the Homeowners Protection Act of 1998 ([12 U.S.C. 4905](#)) is amended--

(1) in subsection (c)--

(A) in the matter preceding paragraph (1), by striking "a residential mortgage or"; and

(B) in paragraph (2), by inserting "transaction" after "residential mortgage"; and

(2) in subsection (d), by inserting "transaction" after "residential mortgage".

SEC. 404. CANCELLATION RIGHTS AFTER CANCELLATION DATE.

Section 3 of the Homeowners Protection Act of 1998 ([12 U.S.C. 4902](#)) is amended--

(1) in subsection (a)--

(A) in the matter preceding paragraph (1), by inserting after "cancellation date" the following: "or any later date that the mortgagor fulfills all of the requirements under paragraphs (1) through (4)";

(B) in paragraph (2), by striking "and" at the end;

(C) by redesignating paragraph (3) as paragraph (4); and

(D) by inserting after paragraph (2) the following new paragraph:

"(3) is current on the payments required by the terms of the residential mortgage transaction; and"; and

(2) in subsection (e)(1)(B) (as so redesignated by the preceding provisions of this title), by striking "subsection (a)(3)" and inserting "subsection (a)(4)".

SEC. 405. CLARIFICATION OF CANCELLATION AND TERMINATION ISSUES AND LENDER

PAID MORTGAGE INSURANCE DISCLOSURE REQUIREMENTS.

(a) Good Payment History. Section 2(4) of the Homeowners Protection Act of 1998 ([12 U.S.C. 4901](#)(4)) is amended--

(1) in subparagraph (A)--

(A) by inserting "the later of (i)" before "the date"; and

(B) by inserting ", or (ii) the date that the mortgagor submits a request for cancellation under section 3(a)(1)" before the semicolon; and

(2) in subparagraph (B)--

(A) by inserting "the later of (i)" before "the date"; and

(B) by inserting ", or (ii) the date that the mortgagor submits a request for cancellation under section 3(a)(1)" before the period at the end.

(b) Automatic Termination. Paragraph (2) of section 3(b) of the Homeowners Protection Act of 1998 ([12 U.S.C. 4902](#)(b)(2)) is amended to read as follows:

"(2) if the mortgagor is not current on the termination date, on the first day of the first month beginning after the date that the mortgagor becomes current on the payments required by the terms of the residential mortgage transaction."

(c) Premium Payments. Section 3 of the Homeowners Protection Act of 1998 ([12 U.S.C. 4902](#)) is amended by adding at the end the following new subsection:

"(h) Accrued Obligation for Premium Payments. The cancellation or termination under this section of the private mortgage insurance of a mortgagor shall not affect the rights of any mortgagee, servicer, or mortgage insurer to enforce any obligation of such mortgagor for premium payments accrued prior to the date on which such cancellation or termination occurred."

SEC. 406. DEFINITIONS.

(a) Refinanced. Section 6(c)(1)(B)(ii) of the Homeowners Protection Act of 1998 ([12 U.S.C. 4905](#)(c)(1)(B)(ii)) is amended by inserting after "refinanced" the following: "(under the meaning given such term in the regulations issued by the Board of Governors of the Federal Reserve System to carry out the Truth in Lending Act ([15 U.S.C. 1601](#) et seq.))".

(b) Midpoint of the Amortization Period. Section 2 of the Homeowners Protection Act of 1998 ([12 U.S.C. 4901](#)) is amended by inserting after paragraph (6) (as added by the preceding provisions of this title) the following new paragraph:

"(7) Midpoint of the amortization period. The term 'midpoint of the amortization period' means, with respect to a residential mortgage transaction, the point in time that is halfway through the period that begins upon the first day of the amortization period established at the time a residential mortgage transaction is consummated and ends upon the completion of the entire period over which the mortgage is scheduled to be amortized."

(c) Original Value. Section 2(12) of the Homeowners Protection Act of 1998 ([12 U.S.C. 4901](#)(10)) (as so redesignated by the preceding provisions of this title) is amended --

(1) by inserting "transaction" after "a residential mortgage"; and

(2) by adding at the end the following new sentence: "In the case of a residential mortgage transaction for refinancing the principal residence of the mortgagor, such term means only the appraised value relied upon by the mortgagee to approve the refinance transaction."

(d) Principal Residence. Section 2 of the Homeowners Protection Act of 1998 ([12 U.S.C. 4901](#)) is amended --

(1) in paragraph (14) (as so redesignated by the preceding provisions of this title) by striking "primary" and inserting "principal"; and

(2) in paragraph (15) (as so redesignated by the preceding provisions of this title) by striking "primary" and inserting "principal".

Homeowners Protection Act of 1998

HOMEOWNERS PROTECTION ACT OF 1998

12 USC 4901 et seq.; 112 Stat. 897; Pub. L. 105-216 (July 29, 1998)

An Act:

To require automatic cancellation and notice of cancellation rights with respect to private mortgage insurance which is required as a condition for entering into a residential mortgage transaction, to abolish the Thrift Depositor Protection Oversight Board, and for other purposes.

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) **SHORT TITLE-** This Act may be cited as the `Homeowners Protection Act of 1998`.

(b) **TABLE OF CONTENTS-** The table of contents for this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Termination of private mortgage insurance.
- Sec. 4. Disclosure requirements.
- Sec. 5. Notification upon cancellation or termination.
- Sec. 6. Disclosure requirements for lender paid mortgage insurance.
- Sec. 7. Fees for disclosures.
- Sec. 8. Civil liability.
- Sec. 9. Effect on other laws and agreements.
- Sec. 10. Enforcement.
- Sec. 11. Construction.
- Sec. 12. Amendment to Higher Education Act of 1965.
- Sec. 13. Effective date.
- Sec. 14. Abolishment of the Thrift Depositor Protection Oversight Board.

SECTION 2. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) **ADJUSTABLE RATE MORTGAGE-** The term `adjustable rate mortgage` means a residential mortgage that has an interest rate that is subject to change.

(2) **CANCELLATION DATE-** The term `cancellation date` means--

(A) with respect to a fixed rate mortgage, at the option of the mortgagor, the date on which the principal balance of the mortgage--

(i) based solely on the initial amortization schedule for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 80 percent of the original value of the property securing the loan; or

(ii) based solely on actual payments, reaches 80 percent of the original value of the property securing

the loan; and

(B) with respect to an adjustable rate mortgage, at the option of the mortgagor, the date on which the principal balance of the mortgage--

(i) based solely on amortization schedules for that mortgage, and irrespective of the outstanding balance for that mortgage on that date, is first scheduled to reach 80 percent of the original value of the property securing the loan; or

(ii) based solely on actual payments, first reaches 80 percent of the original value of the property securing the loan.

(3) **FIXED RATE MORTGAGE-** The term `fixed rate mortgage' means a residential mortgage that has an interest rate that is not subject to change.

(4) **GOOD PAYMENT HISTORY-** The term `good payment history' means, with respect to a mortgagor, that the mortgagor has not--

(A) made a mortgage payment that was 60 days or longer past due during the 12-month period beginning 24 months before the date on which the mortgage reaches the cancellation date; or

(B) made a mortgage payment that was 30 days or longer past due during the 12-month period preceding the date on which the mortgage reaches the cancellation date.

(5) **INITIAL AMORTIZATION SCHEDULE-** The term `initial amortization schedule' means a schedule established at the time at which a residential mortgage transaction is consummated with respect to a fixed rate mortgage, showing--

(A) the amount of principal and interest that is due at regular intervals to retire the principal balance and accrued interest over the amortization period of the loan; and

(B) the unpaid principal balance of the loan after each scheduled payment is made.

(6) **MORTGAGE INSURANCE-** The term `mortgage insurance' means insurance, including any mortgage guaranty insurance, against the nonpayment of, or default on, an individual mortgage or loan involved in a residential mortgage transaction.

(7) **MORTGAGE INSURER-** The term `mortgage insurer' means a provider of private mortgage insurance, as described in this Act, that is authorized to transact such business in the State in which the provider is transacting such business.

(8) **MORTGAGEE-** The term `mortgagee' means the holder of a residential mortgage at the time at which that mortgage transaction is consummated.

(9) **MORTGAGOR-** The term `mortgagor' means the original borrower under a residential mortgage or his or her successors or assignees.

(10) **ORIGINAL VALUE-** The term `original value', with respect to a residential mortgage, means the lesser of the sales price of the property securing the mortgage, as reflected in the contract, or the appraised value at the time at which the subject residential mortgage transaction was consummated.

(11) **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 Housing Act of 1949.

SECTION 3. TERMINATION OF PRIVATE MORTGAGE INSURANCE.

(a) **BORROWER CANCELLATION-** A requirement for private mortgage insurance in connection with a residential mortgage transaction shall be canceled on the cancellation date, if the mortgagor--

(1) submits a request in writing to the servicer that cancellation be initiated;

(2) has a good payment history with respect to the residential mortgage; and

(3) has satisfied any requirement of the holder of the mortgage (as of the date of a request under paragraph (1)) for--

- (A) evidence (of a type established in advance and made known to the mortgagor by the servicer promptly upon receipt of a request under paragraph (1)) that the value of the property securing the mortgage has not declined below the original value of the property; and
- (B) certification that the equity of the mortgagor in the residence securing the mortgage is unencumbered by a subordinate lien.
- (b) **AUTOMATIC TERMINATION-** A requirement for private mortgage insurance in connection with a residential mortgage transaction shall terminate with respect to payments for that mortgage insurance made by the mortgagor--
- (1) on the termination date if, on that date, the mortgagor is current on the payments required by the terms of the residential mortgage transaction; or
- (2) on the date after the termination date on which the mortgagor becomes current on the payments required by the terms of the residential mortgage transaction.
- (c) **FINAL TERMINATION-** If a requirement for private mortgage insurance is not otherwise canceled or terminated in accordance with subsection (a) or (b), in no case may such a requirement be imposed beyond the first day of the month immediately following the date that is the midpoint of the amortization period of the loan if the mortgagor is current on the payments required by the terms of the mortgage.
- (d) **NO FURTHER PAYMENTS-** No payments or premiums may be required from the mortgagor in connection with a private mortgage insurance requirement terminated or canceled under this section--
- (1) in the case of cancellation under subsection (a), more than 30 days after the later of--
- (A) the date on which a request under subsection (a)(1) is received; or
- (B) the date on which the mortgagor satisfies any evidence and certification requirements under subsection (a)(3);
- (2) in the case of termination under subsection (b), more than 30 days after the termination date or the date referred to in subsection (b)(2), as applicable; and
- (3) in the case of termination under subsection (c), more than 30 days after the final termination date established under that subsection.
- (e) **RETURN OF UNEARNED PREMIUMS-**
- (1) **IN GENERAL-** Not later than 45 days after the termination or cancellation of a private mortgage insurance requirement under this section, all unearned premiums for private mortgage insurance shall be returned to the mortgagor by the servicer.
- (2) **TRANSFER OF FUNDS TO SERVICER-** Not later than 30 days after notification by the servicer of termination or cancellation of private mortgage insurance under this Act with respect to a mortgagor, a mortgage insurer that is in possession of any unearned premiums of that mortgagor shall transfer to the servicer of the subject mortgage an amount equal to the amount of the unearned premiums for repayment in accordance with paragraph (1).
- (f) **EXCEPTIONS FOR HIGH RISK LOANS-**
- (1) **IN GENERAL-** The termination and cancellation provisions in subsections (a) and (b) do not apply to any residential mortgage or mortgage transaction that, at the time at which the residential mortgage transaction is consummated, has high risks associated with the extension of the loan--

SECTION 4. DISCLOSURE REQUIREMENTS.

- (a) **DISCLOSURES FOR NEW MORTGAGES AT TIME OF TRANSACTION-**
- (1) **DISCLOSURES FOR NON-EXEMPTED TRANSACTIONS-** In any case in which private mortgage insurance is required in connection with a residential mortgage or mortgage transaction (other than a mortgage or mortgage transaction described in section 3(f)(1)), at the time at which the

transaction is consummated, the mortgagee shall provide to the mortgagor--

(A) if the transaction relates to a fixed rate mortgage--

(i) a written initial amortization schedule; and

(ii) written notice--

(I) that the mortgagor may cancel the requirement in accordance with section 3(a) of this Act indicating the date on which the mortgagor may request cancellation, based solely on the initial amortization schedule;

(II) that the mortgagor may request cancellation in accordance with section 3(a) of this Act earlier than provided for in the initial amortization schedule, based on actual payments;

(III) that the requirement for private mortgage insurance will automatically terminate on the termination date in accordance with section 3(b) of this Act, and what that termination date is with respect to that mortgage; and

(IV) that there are exemptions to the right to cancellation and automatic termination of a requirement for private mortgage insurance in accordance with section 3(f) of this Act, and whether such an exemption applies at that time to that transaction; and

(B) if the transaction relates to an adjustable rate mortgage, a written notice that--

(i) the mortgagor may cancel the requirement in accordance with section 3(a) of this Act on the cancellation date, and that the servicer will notify the mortgagor when the cancellation date is reached;

(ii) the requirement for private mortgage insurance will automatically terminate on the termination date, and that on the termination date, the mortgagor will be notified of the termination or that the requirement will be terminated as soon as the mortgagor is current on loan payments; and

(iii) there are exemptions to the right of cancellation and automatic termination of a requirement for private mortgage insurance in accordance with section 3(f) of this Act, and whether such an exemption applies at that time to that transaction.

(2) **DISCLOSURES FOR EXCEPTED TRANSACTIONS-** In the case of a mortgage or mortgage transaction described in section 3(f)(1), at the time at which the transaction is consummated, the mortgagee shall provide written notice to the mortgagor that in no case may private mortgage insurance be required beyond the date that is the midpoint of the amortization period of the loan, if the mortgagor is current on payments required by the terms of the residential mortgage.

(3) **ANNUAL DISCLOSURES-** If private mortgage insurance is required in connection with a residential mortgage transaction, the servicer shall disclose to the mortgagor in each such transaction in an annual written statement--

(A) the rights of the mortgagor under this Act to cancellation or termination of the private mortgage insurance requirement; and

(B) an address and telephone number that the mortgagor may use to contact the servicer to determine whether the mortgagor may cancel the private mortgage insurance.

(4) **APPLICABILITY-** Paragraphs (1) through (3) shall apply with respect to each residential mortgage transaction consummated on or after the date that is 1 year after the date of enactment of this Act.

SECTION 5. NOTIFICATION UPON CANCELLATION OR TERMINATION.

(a) **IN GENERAL-** Not later than 30 days after the date of cancellation or termination of a private mortgage insurance requirement in accordance with this Act, the servicer shall notify the mortgagor in writing--

(1) that the private mortgage insurance has terminated and that the mortgagor no longer has private

mortgage insurance; and

(2) that no further premiums, payments, or other fees shall be due or payable by the mortgagor in connection with the private mortgage insurance.

(b) NOTICE OF GROUNDS-

(1) IN GENERAL- If a servicer determines that a mortgage did not meet the requirements for termination or cancellation of private mortgage insurance under subsection (a) or (b) of section 3, the servicer shall provide written notice to the mortgagor of the grounds relied on to make the determination (including the results of any appraisal used to make the determination).

(2) TIMING- Notice required by paragraph (1) shall be provided--

(A) with respect to cancellation of private mortgage insurance under section 3(a), not later than 30 days after the later of--

(i) the date on which a request is received under section 3(a)(1); or

(ii) the date on which the mortgagor satisfies any evidence and certification requirements under section 3(a)(3); and

(B) with respect to termination of private mortgage insurance under section 3(b), not later than 30 days after the scheduled termination date.

SECTION 6. DISCLOSURE REQUIREMENTS FOR LENDER PAID MORTGAGE INSURANCE.

(a) DEFINITIONS- For purposes of this section--

(1) the term 'borrower paid mortgage insurance' means private mortgage insurance that is required in connection with a residential mortgage transaction, payments for which are made by the borrower;

(2) the term 'lender paid mortgage insurance' means private mortgage insurance that is required in connection with a residential mortgage transaction, payments for which are made by a person other than the borrower; and

(3) the term 'loan commitment' means a prospective mortgagee's written confirmation of its approval, including any applicable closing conditions, of the application of a prospective mortgagor for a residential mortgage loan.

(b) EXCLUSION- Sections 3 through 5 do not apply in the case of lender paid mortgage insurance.

(c) NOTICES TO MORTGAGOR- In the case of lender paid mortgage insurance that is required in connection with a residential mortgage or a residential mortgage transaction--

(1) not later than the date on which a loan commitment is made for the residential mortgage transaction, the prospective mortgagee shall provide to the prospective mortgagor a written notice--

(A) that lender paid mortgage insurance differs from borrower paid mortgage insurance, in that lender paid mortgage insurance may not be canceled by the mortgagor, while borrower paid mortgage insurance could be cancelable by the mortgagor in accordance with section 3(a) of this Act, and could automatically terminate on the termination date in accordance with section 3(b) of this Act;

(B) that lender paid mortgage insurance--

(i) usually results in a residential mortgage having a higher interest rate than it would in the case of borrower paid mortgage insurance; and

(ii) terminates only when the residential mortgage is refinanced, paid off, or otherwise terminated; and

(C) that lender paid mortgage insurance and borrower paid mortgage insurance both have benefits and disadvantages, including a generic analysis of the differing costs and benefits of a residential mortgage in the case lender paid mortgage insurance versus borrower paid mortgage insurance over

a 10-year period, assuming prevailing interest and property appreciation rates;

SECTION 7. FEES FOR DISCLOSURES.

No fee or other cost may be imposed on any mortgagor with respect to the provision of any notice or information to the mortgagor pursuant to this Act.

SECTION 8. CIVIL LIABILITY.

(a) **IN GENERAL-** Any servicer, mortgagee, or mortgage insurer that violates a provision of this Act shall be liable to each mortgagor to whom the violation relates for--

(1) in the case of an action by an individual, or a class action in which the liable party is not subject to section 10, any actual damages sustained by the mortgagor as a result of the violation, including interest (at a rate determined by the court) on the amount of actual damages, accruing from the date on which the violation commences;

(2) in the case of--

(A) an action by an individual, such statutory damages as the court may allow, not to exceed \$2,000; and

(B) in the case of a class action--

(i) in which the liable party is subject to section 10, such amount as the court may allow, except that the total recovery under this subparagraph in any class action or series of class actions arising out of the same violation by the same liable party shall not exceed the lesser of \$500,000 or 1 percent of the net worth of the liable party, as determined by the court; and

(ii) in which the liable party is not subject to section 10, such amount as the court may allow, not to exceed \$1,000 as to each member of the class, except that the total recovery under this subparagraph in any class action or series of class actions arising out of the same violation by the same liable party shall not exceed the lesser of \$500,000 or 1 percent of the gross revenues of the liable party, as determined by the court;

(3) costs of the action; and

(4) reasonable attorney fees, as determined by the court.

(b) **TIMING OF ACTIONS-** No action may be brought by a mortgagor under subsection (a) later than 2 years after the date of the discovery of the violation that is the subject of the action.

(c) **LIMITATIONS ON LIABILITY-**

(1) **IN GENERAL-** With respect to a residential mortgage transaction, the failure of a servicer to comply with the requirements of this Act due to the failure of a mortgage insurer or a mortgagee to comply with the requirements of this Act, shall not be construed to be a violation of this Act by the servicer.

(2) **RULE OF CONSTRUCTION-** Nothing in paragraph (1) shall be construed to impose any additional requirement or liability on a mortgage insurer, a mortgagee, or a holder of a residential mortgage.

SECTION 9. EFFECT ON OTHER LAWS AND AGREEMENTS.

(a) **EFFECT ON STATE LAW-**

(1) **IN GENERAL-** With respect to any residential mortgage or residential mortgage transaction consummated after the effective date of this Act, and except as provided in paragraph (2), the provisions of this Act shall supersede any provisions of the law of any State relating to requirements for obtaining or maintaining private mortgage insurance in connection with residential mortgage transactions, cancellation or automatic termination of such private mortgage insurance, any disclosure

of information addressed by this Act, and any other matter specifically addressed by this Act.

(2) PROTECTION OF EXISTING STATE LAWS-

(A) IN GENERAL- The provisions of this Act do not supersede protected State laws, except to the extent that the protected State laws are inconsistent with any provision of this Act, and then only to the extent of the inconsistency.

(B) INCONSISTENCIES- A protected State law shall not be considered to be inconsistent with a provision of this Act if the protected State law--

(i) requires termination of private mortgage insurance or other mortgage guaranty insurance--

(I) at a date earlier than as provided in this Act; or

(II) when a mortgage principal balance is achieved that is higher than as provided in this Act; or

(ii) requires disclosure of information--

(I) that provides more information than the information required by this Act; or

(II) more often or at a date earlier than is required by this Act.

(C) PROTECTED STATE LAWS- For purposes of this paragraph, the term `protected State law` means a State law--

(i) regarding any requirements relating to private mortgage insurance in connection with residential mortgage transactions;

(ii) that was enacted not later than 2 years after the date of the enactment of this Act; and

(iii) that is the law of a State that had in effect, on or before January 2, 1998, any State law described in clause (i).

(b) EFFECT ON OTHER AGREEMENTS- The provisions of this Act shall supersede any conflicting provision contained in any agreement relating to the servicing of a residential mortgage loan entered into by the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any private investor or note holder (or any successors thereto).

SECTION 10. ENFORCEMENT.

(a) IN GENERAL- Compliance with the requirements imposed under this Act shall be enforced under--

(1) section 8 of the Federal Deposit Insurance Act--

(A) by the appropriate Federal banking agency (as defined in section 3(q) of the Federal Deposit Insurance Act) in the case of insured depository institutions (as defined in section 3(c)(2) of such Act);

(B) by the Federal Deposit Insurance Corporation in the case of depository institutions described in clause (i), (ii), or (iii) of section 19(b)(1)(A) of the Federal Reserve Act that are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act); and

(C) by the Director of the Office of Thrift Supervision in the case of depository institutions described in clause (v) and or (vi) of section 19(b)(1)(A) of the Federal Reserve Act that are not insured depository institutions (as defined in section 3(c)(2) of the Federal Deposit Insurance Act);

(2) the Federal Credit Union Act, by the National Credit Union Administration Board in the case of depository institutions described in clause (iv) of section 19(b)(1)(A) of the Federal Reserve Act; and

(3) part C of title V of the Farm Credit Act of 1971 (12 U.S.C. 2261 et seq.), by the Farm Credit Administration in the case of an institution that is a member of the Farm Credit System.

(b) ADDITIONAL ENFORCEMENT POWERS-

(1) VIOLATION OF THIS ACT TREATED AS VIOLATION OF OTHER ACTS- For purposes of the exercise by any agency referred to in subsection (a) of such agency's powers under any Act referred to in such subsection, a violation of a requirement imposed under this Act shall be deemed to

be a violation of a requirement imposed under that Act.

(2) ENFORCEMENT AUTHORITY UNDER OTHER ACTS- In addition to the powers of any agency referred to in subsection (a) under any provision of law specifically referred to in such subsection, each such agency may exercise, for purposes of enforcing compliance with any requirement imposed under this Act, any other authority conferred on such agency by law.

(c) ENFORCEMENT AND REIMBURSEMENT- In carrying out its enforcement activities under this section, each agency referred to in subsection (a) shall--

(1) notify the mortgagee or servicer of any failure of the mortgagee or servicer to comply with 1 or more provisions of this Act;

(2) with respect to each such failure to comply, require the mortgagee or servicer, as applicable, to correct the account of the mortgagor to reflect the date on which the mortgage insurance should have been canceled or terminated under this Act; and

(3) require the mortgagee or servicer, as applicable, to reimburse the mortgagor in an amount equal to the total unearned premiums paid by the mortgagor after the date on which the obligation to pay those premiums ceased under this Act.

SECTION 11. CONSTRUCTION.

(a) PMI NOT REQUIRED- Nothing in this Act shall be construed to impose any requirement for private mortgage insurance in connection with a residential mortgage transaction.

(b) NO PRECLUSION OF CANCELLATION OR TERMINATION AGREEMENTS- Nothing in this Act shall be construed to preclude cancellation or termination, by agreement between a mortgagor and the holder of the mortgage, of a requirement for private mortgage insurance in connection with a residential mortgage transaction before the cancellation or termination date established by this Act for the mortgage.

SECTION 12. AMENDMENT TO HIGHER EDUCATION ACT OF 1965.

Section 481(a)(4) of the Higher Education Act of 1965 (20 U.S.C.

1088(a)(4)) is amended by--

(1) inserting the subparagraph designation '(A)' immediately after the paragraph designation '(4)';

(2) redesignating subparagraphs (A) and (B) as clauses (i) and (ii), respectively; and

(3) adding at the end thereof the following new subparagraph:

'(B) Subparagraph (A)(i) shall not apply to a nonprofit institution whose primary function is to provide health care educational services (or an affiliate of such an institution that has the power, by contract or ownership interest, to direct or cause the direction of the institution's management or policies) that files for bankruptcy under chapter 11 of title 11 of the United States Code between July 1, and December 31, 1998.'

SECTION 13. EFFECTIVE DATE.

This Act, other than section 14, shall become effective 1 year after the date of enactment of this Act.

SECTION 14. ABOLISHMENT OF THE THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD.

(a) IN GENERAL- Effective at the end of the 3-month period beginning on the date of enactment of this

Act, the Thrift Depositor Protection Oversight Board established under section 21A of the Federal Home Loan Bank Act (hereafter in this section referred to as the `Oversight Board') is hereby abolished.

(b) DISPOSITION OF AFFAIRS-

(1) POWER OF CHAIRPERSON- Effective on the date of enactment of this Act, the Chairperson of the Oversight Board (or the designee of the Chairperson) may exercise on behalf of the Oversight Board any power of the Oversight Board necessary to settle and conclude the affairs of the Oversight Board.

(2) AVAILABILITY OF FUNDS- Funds available to the Oversight Board shall be available to the Chairperson of the Oversight Board to pay expenses incurred in carrying out paragraph (1).

(c) SAVINGS PROVISION-

(1) EXISTING RIGHTS, DUTIES, AND OBLIGATIONS NOT AFFECTED- No provision of this section shall be construed as affecting the validity of any right, duty, or obligation of the United States, the Oversight Board, the Resolution Trust Corporation, or any other person that--

(A) arises under or pursuant to the Federal Home Loan Bank Act, or any other provision of law applicable with respect to the Oversight Board; and

(B) existed on the day before the abolishment of the Oversight Board in accordance with subsection (a).

(2) CONTINUATION OF SUITS- No action or other proceeding commenced by or against the Oversight Board with respect to any function of the Oversight Board shall abate by reason of the enactment of this section.

(3) LIABILITIES-

(A) IN GENERAL- All liabilities arising out of the operation of the Oversight Board during the period beginning on August 9, 1989, and the date that is 3 months after the date of enactment of this Act shall remain the direct liabilities of the United States.

(B) NO SUBSTITUTION- The Secretary of the Treasury shall not be substituted for the Oversight Board as a party to any action or proceeding referred to in subparagraph (A).

(4) CONTINUATIONS OF ORDERS, RESOLUTIONS, DETERMINATIONS, AND REGULATIONS PERTAINING TO THE RESOLUTION FUNDING CORPORATION-

(A) IN GENERAL- All orders, resolutions, determinations, and regulations regarding the Resolution Funding Corporation shall continue in effect according to the terms of such orders, resolutions, determinations, and regulations until modified, terminated, set aside, or superseded in accordance with applicable law if such orders, resolutions, determinations, or regulations--

(i) have been issued, made, and prescribed, or allowed to become effective by the Oversight Board, or by a court of competent jurisdiction, in the performance of functions transferred by this section; and

(ii) are in effect at the end of the 3-month period beginning on the date of enactment of this section.

(B) ENFORCEABILITY OF ORDERS, RESOLUTIONS, DETERMINATIONS, AND REGULATIONS BEFORE TRANSFER- Before the effective date of the transfer of the authority and duties of the Resolution Funding Corporation to the Secretary of the Treasury under subsection (d), all orders, resolutions, determinations, and regulations pertaining to the Resolution Funding Corporation shall be enforceable by and against the United States.

(C) ENFORCEABILITY OF ORDERS, RESOLUTIONS, DETERMINATIONS, AND REGULATIONS AFTER TRANSFER- On and after the effective date of the transfer of the authority and duties of the Resolution Funding Corporation to the Secretary of the Treasury under subsection (d), all orders, resolutions, determinations, and regulations pertaining to the Resolution Funding Corporation shall be enforceable by and against the Secretary of the Treasury.