The original documents are located in Box 15, folder "12/22/74 S3164 Real Estate Settlement Procedures Act of 1974" of the White House Records Office: Legislation Case Files at the Gerald R. Ford Presidential Library.

APPROVED
DEC 22 1974

Mailed in Colorado
12/23

To Archives
12/24

ACTION

THE WHITE HOUSE

WASHINGTON

Last Day: December 24

December 20, 1974

MEMORANDUM FOR THE PRESIDENT

FROM: KEN COLE

SUBJECT: Enrolled Bill S. 3164 - Real Estate Settlement Procedures Act of 1974

Attached for your consideration is S. 3164, sponsored by Senator Brock, which regulates certain lending practices and closing and settlement procedures in federally related mortgage transactions to the end that unnecessary costs and difficulties of purchasing housing are minimized.

OMB recommends approval and provides you with additional background information in its enrolled bill report (Tab A).

Max Friedersdorf and Phil Areeda both recommend approval.

RECOMMENDATION

That you sign S. 3164 (Tab B)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 19 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3164 - Real Estate Settlement Procedures Act of 1974
Sponsor - Sen. Brock (R) Tennessee

Last Day for Action

December 24, 1974 - Tuesday

Purpose

Establishes new procedures, requirements, and penalties relating to the settlement process on real estate transfers involving federally related mortgage loans, including requirements for greater advance disclosure of the nature and costs of settlement services, prohibitions on kickbacks and referral fees, reductions in escrow account payments, and provisions aimed at reform and modernization of local recordkeeping of land title information.

Agency Recommendations

Office of Management and Budget	Approval
Department of Housing and Urban Development	Approval
Federal Home Loan Bank Board	Approval
Federal Deposit Insurance Corporation	Approval
Veterans Administration	No objection, but defers to HUD
Department of the Treasury	No objection
Department of Justice	No objection
Federal Trade Commission	Defers to other agencies

Discussion

S. 3164 is designed to address, at the Federal level, certain problem areas in the real estate settlement process--abusive practices that increase settlement costs to home buyers, a

lack of understanding about the process and its costs, and complexities and inefficiencies in the present system for the recording of land titles on the public records.

The first legislation enacted by the Congress regarding settlement costs was section 701 of the Emergency Home Finance Act of 1970 which directed HUD and VA to prescribe standards governing the amounts of settlement costs allowable in connection with financing of FHA-insured and VA-guaranteed mortgages. As explained further below, HUD testified during hearings on the current bill that this provision is undesirable and unworkable, and recommended its repeal. The House-passed bill would have repealed section 701, but the Senate bill did not provide for its repeal, nor does the enrolled bill.

Apart from that aspect, the Administration generally did not object to S. 3164 during its consideration by the Congress.

In your letter of December 4, 1974 to State and local officials dealing with the Nation's anti-inflation efforts, you cited real estate settlement fees as an example of price-fixing arrangements which should be reexamined by those officials within their jurisdictions. It is worthy of note that there are several features of S. 3164 which tend toward a possible future expansion of the Federal role in regulating the real estate settlement process. Most notably, the bill would require the Secretary of HUD, after consultation with certain other agencies, to report to the Congress within 3 to 5 years on the need for further legislation on real estate settlements. This report would have to include recommendations on (1) the desirability of requiring lenders of federally related mortgage loans to bear particular costs that would otherwise be paid for by borrowers, (2) whether Federal regulation of settlement charges in connection with such loans is necessary and desirable, and (3) the ways in which the Federal Government can assist local efforts to modernize the recordation of land title information.

The enrolled bill would also override provisions of State law which are inconsistent with its provisions, except where the State law gives greater protection to the consumer.

Major provisions of S. 3164

Effective 180 days after enactment, S. 3164 would provide a variety of means for dealing with real estate settlement problems cited above. Its provisions would apply to all settlement transactions involving a "federally related mortgage loan," a term so broadly defined in the bill that it would cover a high percentage of all residential real estate mortgage loans involving properties for occupancy by 1 to 4 families.

More specifically, the major provisions of the bill would:

-- require HUD to prescribe a standard settlement cost form itemizing all charges imposed by the borrower and seller in covered settlement transactions and including the information required under the Truth In Lending Act.

-- require lenders at the time of the loan commitment or at least 12 days before closing to provide the borrower, seller, or any related Federal agency an itemized disclosure of each settlement charge on the standard form developed by HUD.

-- require HUD to prepare, and lenders to distribute to homebuyers, special information booklets explaining the nature and cost of settlements. On a demonstration basis, in selected housing market areas, the Secretary would be required to include in the booklets statements of the range of costs for specific settlement services in such areas. A report on this demonstration, including the feasibility of providing such information on a nationwide basis, would have to be delivered to the Congress by June 30, 1976.

-- prohibit false information, referral fees, kickbacks, and other unearned fees in covered settlement transactions, and prohibit fees for the preparation of Truth-In-Lending and uniform settlement statements.

-- prohibit sellers of property from requiring that title insurance be purchased from any particular title company.

-- require lenders making mortgage loans on existing property at least one year old to confirm that the seller has informed the buyer of the name and address of the seller;

the seller's purchase date; and the date and purchase price of the last "arm's length" transaction involving the property, if it has been held less than two years, and not been used by the seller as a residence.

-- limit the amount that a lender could require a borrower to deposit in escrow accounts to ensure the payment of real estate taxes and insurance.

-- provide for the identification of "straw parties" by requiring disclosure to federally insured or regulated financial institutions of the identity of a person receiving the beneficial interest of a federally related mortgage loan and making such information available, on request, to the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board.

Civil and/or criminal penalties would be imposed for violations of key provisions of the enrolled bill, such as failure to disclose required information, providing false information, and giving or receiving kickbacks and unearned fees.

Section 701 repeal

As indicated above, the most controversial issue with respect to this legislation was the repeal of section 701 of the Emergency Home Finance Act of 1970, which directed HUD and VA to prescribe standards governing settlement costs on their mortgage transactions.

The enrolled bill does not repeal section 701, as the Administration had urged. HUD had pointed out in testimony that attempting to regulate settlement costs nationwide would be virtually impossible in view of the wide variances in settlement practices and that, if such an attempt were workable, it would require an extensive bureaucracy and very high administrative costs widely out of proportion to the benefits that would be received by consumers.

While deciding not to include repeal of section 701 in S. 3164, the conference report on the bill states:

> "The conferees recognize that section 701 authority is not currently being used. However, it is agreed that continuation of this stand-by authority is

> desirable for its deterrent effect and can, in fact, facilitate the achievement of the purposes of the Act. It should be understood, however, that nothing in the Act is intended to preclude the Secretary's use of Section 701 authority at any time he finds it necessary to curb abuses in specific market areas."

HUD's attached letter on the enrolled bill states, "...it is not anticipated that mere retention on the statute books of section 701 will pose any immediate difficulty. Nor will its continued existence, in our opinion, of itself require the Secretary to undertake to implement it by establishing maximum settlement charges. Rather, as we view it -- and we believe the Congress shares this view -- section 701 confers stand-by authority whose use is dependent on a determination by the Secretary and/or Administrator of the need for its implementation to curb abuses in specific areas." Since S. 3164 would not require Federal regulation of settlement costs and the congressional guidance allows discretion, HUD's interpretation appears plausible.

Recommendations

HUD, in its letter on the enrolled bill, concludes: "In sum, we believe that while it is not precisely what the Administration recommended or what it desires, the enrolled enactment of S. 3164, considered on balance, is clearly desirable legislation. Accordingly, we recommend that the President give his approval to the measure."

VA has no objection to approval of the bill, but does not believe that it will accomplish its intended purpose of protecting homebuyers despite certain beneficial provisions. VA notes that the bill does not deal with discount points; creates additional work for lenders, who will pass on their extra costs to borrowers or sellers in the form of higher interest rates or discounts; and will often result in closings being delayed because of the time required to obtain cost data and to complete disclosure statements.

The Federal Home Loan Bank Board notes that "While there are a small number of provisions in the bill which the Bank Board has in the past opposed, on balance there is far more to recommend its enactment."

The other agencies whose views were requested either recommend approval or have no objection to approval.

* * * * *

While repeal of section 701 would have been desirable, S. 3164 has the effect of deferring the major question of Federal regulation of settlement costs until HUD has studied the issue and reports to the Congress several years hence. Accordingly, we concur with HUD's recommendation that you approve the bill.

Wilfred H Rommel

Assistant Director for
Legislative Reference

Enclosures

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 801

Date: December 20, 1974 Time: 8:30 a.m.

FOR ACTION: Tod Hullin
Max Friedersdorf
Phil Areeda

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 20 Time: 2:00 p.m.

SUBJECT:

Enrolled Bill S. 3164 - Real Estate Settlement Procedures Act of 1974

ACTION REQUESTED:

____ For Necessary Action ____x For Your Recommendations

____ Prepare Agenda and Brief ____ Draft Reply

__x__ For Your Comments ____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

K. R. COLE, JR.
For the President

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 801

Date: December 20, 1974 Time: 8:30 a.m.

FOR ACTION: Tod Hullin
Max Friedersdorf
Phil Areeda

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 20 Time: 2:00 p.m.

SUBJECT:

Enrolled Bill S. 3164 - Real Estate Settlement Procedures Act of 1974

ACTION REQUESTED:

____ For Necessary Action

____ Prepare Agenda and Brief

__x__ For Your Comments

__x__ For Your Recommendations

____ Draft Reply

____ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Judy
I recommend approval.
12.20.74
12⁴⁰

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
for the President

917

THE WHITE HOUSE

ACTION MEMORANDUM WASHINGTON LOG NO.: 801

Date: December 20, 1974 Time: 8:30 a.m.

FOR ACTION: Tod Hullin
Max Friedersdorf
Phil Areeda

cc (for information): Warren Hendriks
Jerry Jones

FROM THE STAFF SECRETARY

DUE: Date: Friday, December 20 Time: 2:00 p.m.

SUBJECT:

Enrolled Bill S. 3164 - Real Estate Settlement Procedures Act of 1974

ACTION REQUESTED:

___ For Necessary Action

___ Prepare Agenda and Brief

_x_ For Your Comments

_x_ For Your Recommendations

___ Draft Reply

___ Draft Remarks

REMARKS:

Please return to Judy Johnston, Ground Floor West Wing

Sign
P Areeda

PLEASE ATTACH THIS COPY TO MATERIAL SUBMITTED.

If you have any questions or if you anticipate a delay in submitting the required material, please telephone the Staff Secretary immediately.

Warren K. Hendriks
for the President

THE WHITE HOUSE

WASHINGTON

December 21, 1974

MEMORANDUM FOR: WARREN HENDRIKS

FROM: MAX L. FRIEDERSDORF

SUBJECT: Action Memorandum - Log No. 801
Enrolled Bill S. 3164 - Real Estate Settlement Procedures Act of 1974

The Office of Legislative Affairs concurs in the attached proposal and has no additional recommendations.

Attachment

THE GENERAL COUNSEL OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, D. C. 20410

DEC 17 1974

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Washington, D. C. 20503

Attention: Ms. Mohr

Dear Mr. Rommel:

Subject: S. 3164, 93d Congress, Enrolled Enactment

This is in response to your request for our views on the enrolled enactment of S. 3164, the proposed "Real Estate Settlement Procedures Act of 1974".

S. 3164 is major legislation whose enactment would alter considerably the residential real estate settlement process in the United States. This is because its provisions would apply to all residential real estate settlement transactions involving a "federally related mortgage loan," a term which is broadly defined in section 3(1) to cover a high percentage of all residential real estate mortgage loans involving one- to four-family properties.

The measure has a fourfold purpose. It is designed to assure home buyers and sellers greater advance disclosure of the nature and extent of settlement costs, to eliminate kickbacks and other unearned fees which tend to add unnecessarily to settlement services costs, to reduce amounts which home buyers are required to place in escrow accounts established to assure payment of real estate taxes and property insurance premiums, and to reform and modernize local recordkeeping of land title information.

A variety of means, many of which would involve action by the Secretary of Housing and Urban Development, would be employed

to achieve this purpose. These include mandating a uniform settlement cost statement listing charges imposed on the borrower and seller in covered settlement transactions (section 4); requiring the preparation and distribution of special information booklets to familiarize those borrowing to finance home purchases with the nature and purpose of real estate settlement costs and services (section 5); and requiring advance notice (except where expressly waived) by lenders to borrowers and sellers of settlement service charges arising in connection with a covered settlement transaction (section 6).

In addition, the measure would prohibit kickbacks and unearned fees (section 8); prohibit sellers from conditioning property sales on prospective purchasers buying title insurance from particular title companies (section 9); limit strictly the amounts which lenders may require borrowers to deposit in escrow accounts (section 10); and prohibit lenders from charging fees to prepare required disclosure statements (section 12). Also, lenders making Federally related mortgage loans would be required to confirm that the seller or his agent has disclosed to the buyer of existing property the name and address of the seller, the seller's purchase date, and, if the property has been held for less than two years and has not been used by the seller as a residence, the date and purchase price of the last arm's length transaction involving the property (section 7).

Significantly, those violating the enrolled bill's key requirements would be subject to civil liability, criminal penalties or, in some cases, both.

Another provision would require disclosure to federally insured or regulated financial institutions of the identity of a person receiving the beneficial interest of a federally related mortgage loan and, on request of Federal instrumentalities involved with such loans (i.e., the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board), the disclosure to such instrumentalities of that and other information related to the loan (section 11).

The Secretary would be directed to establish and monitor, on a demonstration basis, a model land title information recordation system or systems (section 13). He also would be directed to prepare and include in the required special information booklets, on a demonstration basis in selected housing market areas,

statements of the range of costs for specific settlement services in such areas, and to report to the Congress on the demonstration not later than June 30, 1976 (section 15).

Also, under the enrolled bill, provisions of State law which are inconsistent with the bill's provisions, and which do not afford greater consumer protection than is afforded under it, would be or could become inapplicable with respect to settlement transactions involving covered loans (section 18).

Finally, the Secretary would be directed to report to the Congress, after prescribed consultation, between three and five years after the measure became effective, on (1) the need for any further legislation pertaining to real estate settlements, (2) the desirability of requiring lenders of federally related mortgage loans to bear particular costs that would otherwise be paid for by borrowers, (3) whether Federal regulation of settlement service charges in connection with such loans is necessary and desirable, and (4) the ways in which the Federal Government can assist local efforts at land title information recordation modernization (section 14).

The bill's provisions would become effective 180 days after its enactment (section 19).

We believe this enrolled enactment is noteworthy both for what it contains and for what it fails to contain. In our view, the most important positive features in the legislation are the provisions designed to encourage among prospective home buyers and sellers a greater general awareness of the nature and purpose of real estate settlement costs, and those aimed at assuring advance itemized disclosure to buyers and sellers of the settlement costs involved in their particular settlement transactions. We support the objectives of those provisions and believe they are sufficiently flexible to enable the Secretary to administer them in a way which is constructive while not unduly cumbersome.

S. 3164 also contains a number of other desirable features -- such as a prohibition against kickbacks and unearned fees -- and some less desirable ones. Typical of the latter is a requirement, noted above, for the Secretary to include in the special information booklets, on a demonstration basis, settlement cost range data. While of dubious value, this demonstration is not

likely to be especially difficult to carry out within the relatively broad latitude given the Secretary.

Obviously, S. 3164's single omission of note is the absence of a provision repealing section 701 of the Emergency Home Finance Act of 1970. That section authorizes and directs the Secretary and the VA Administrator, in connection with housing built, rehabilitated, or sold with assistance under the National Housing Act or chapter 37 of title 38 of the United States Code, "to prescribe standards governing the amounts of settlement costs allowable in connection with the financing of such housing . . . ." As we have testified before the Congress, we believe this authority to be undesirable and unworkable. Accordingly, we regret that although the House-passed version of the legislation would have repealed the section, the conferees chose to delete the repealer.

However, it is not anticipated that mere retention on the statute books of section 701 will pose any immediate difficulty. Nor will its continued existence, in our opinion, of itself require the Secretary to undertake to implement it by establishing maximum settlement charges. Rather, as we view it -- and we believe the Congress shares this view -- section 701 confers stand-by authority whose use is dependent on a determination by the Secretary and/or Administrator of the need for its implementation to curb abuses in specific areas.

In this regard, we would note that the Joint Statement of the Conference Managers strongly buttresses this opinion. The Managers said:

> The conferees recognize that section 701 authority is not currently being used. However, it is agreed that continuation of this stand-by authority is desirable for its deterrent effect and can, in fact, facilitate the achievement of the purposes of the Act. It should be understood, however, that nothing in the Act is intended to preclude the Secretary's use of Section 701 authority at any time he finds it necessary to curb abuses in specific market areas.
> (H. Rept. 93-1526, 93d Congress, 2d Session, p. 11).

We also would point out that, as noted above, section 14 of the measure would require the Secretary to report to the Congress on,

among other things, "(b)(2) recommendations on whether Federal regulation of the charges for real estate settlement services in federally related mortgage transactions is necessary and desirable, and, if he concludes that such regulation is necessary and desirable, a description and analysis of the regulatory scheme he believes Congress should adopt;".

It can be argued that the above language would not affect in any way the Secretary's authority under section 701. However, in our view, a better reading would suggest that the Congress expects no general implementation of section 701 until the Secretary reports under section 14 and the Congress acts on any recommendations in his report.

In sum, we believe that while it is not precisely what the Administration recommended or what it desires, the enrolled enactment of S. 3164, considered on balance, is clearly desirable legislation. Accordingly, we recommend that the President give his approval to the measure.

Sincerely,

Robert R. Elliott

FEDERAL HOME LOAN BANK BOARD

WASHINGTON, D. C. 20552

320 FIRST STREET N.W.

FEDERAL HOME LOAN BANK SYSTEM
FEDERAL HOME LOAN MORTGAGE CORPORATION
FEDERAL SAVINGS & LOAN INSURANCE CORPORATION

OFFICE OF
GENERAL COUNSEL

December 17, 1974

Mr. Wilfred H. Rommel
Assistant Director for
Legislative Reference
Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Attention: Ms. Mohr

Dear Mr. Rommel:

This is in response to your request of December 13, 1974 for the views and recommendations of the Bank Board on Enrolled Bill S. 3164, "The Real Estate Settlement Procedures Act of 1974."

The Bank Board has had, over the past year or two, numerous opportunities to comment on various drafts of this settlement cost legislation. We are pleased to find that most, if not all, of our recommendations have been incorporated into the final version of this bill. Thus, while there are a small number of provisions in the bill which the Bank Board has in the past opposed, on balance there is far more to recommend its enactment. The Bank Board would, therefore, encourage approval by the President of this legislation.

Sincerely,

Charles E. Allen
General Counsel

FEDERAL DEPOSIT INSURANCE CORPORATION, Washington, D.C. 20429

OFFICE OF THE CHAIRMAN

December 17, 1974

Honorable Roy L. Ash
Director
Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Dear Mr. Ash:

By enrolled bill request dated December 13, 1974, your Office requested our views and recommendation on S. 3164, 93d Congress, an enrolled bill to be cited as the "Real Estate Settlement Procedures Act of 1974."

The enrolled bill provides generally for more effective advance disclosure of the nature and costs of real estate settlement services, elimination of the payment of kickbacks and referral fees in connection with settlement services pertaining to federally-related mortgage transactions, reduction in the amounts required to be placed in escrow accounts to insure payment of real estate taxes and insurance, and significant reform and modernization of local recordkeeping of land title information. Among other requirements, the bill provides that the Secretary of Housing and Urban Development shall consult with the Administrator of Veterans Affairs, the FDIC and the FHLBB in developing a uniform settlement statement and limits required deposits to escrow accounts for taxes and insurance in connection with federally-related mortgage loans to the amount of such taxes and insurance due on the settlement date and, thereafter, to monthly deposits of one-twelfth of the estimated taxes and insurance for the upcoming twelve months.

While we are in general agreement with the enrolled bill's basic objectives, we assume that our views and recommendation are being requested primarily with respect to section 11 of the enrolled bill, which would add a new Section 25 to the Federal Deposit Insurance Act requiring every insured bank (and every mutual savings or cooperative bank which is not an insured bank) to ascertain the identity of the persons beneficially interested in any federally-related mortgage loan made by the bank "to any agent, trustee, nominee, or other person acting in a fiduciary capacity" and to report such identity and the nature and amount of the loan to the FDIC, if so requested by the Corporation. Uninsured mutual savings banks and cooperative banks would be deemed to be insured banks for

purposes of enforcing these provisions under Section 8 of our Act. The Federal Home Loan Bank Board would be given comparable authority with respect to insured savings and loan institutions, and both the FDIC and the FHLBB could by regulation "exempt classes or types of transactions from the provisions added by this section if the Corporation or the Board determines that the purposes of such provision would not be advanced materially by their application to such transactions."

It is our understanding that the purpose of section 11 is to require disclosure of the identity of certain disreputable "inner-city" landlords who have engaged in the practice of obtaining real estate mortgage loans through "straw parties" to make superficial improvements to "inner-city" property and resell that property at an exorbitant profit. We favor curtailing speculation in "inner-city" real estate by unscrupulous speculators. At the same time, however, we recognize that there are many legitimate uses of the fiduciary relationship in connection with real estate transactions and that financial institutions have a duty to maintain the confidential treatment of customer information. (This issue of the confidential relationship between a financial institution and its customers is, of course, the subject of a number of pending bills.) In order to permit achieving the objectives of section 11 while at the same time not infringing unduly upon the confidential and legitimate fiduciary relationships of financial institutions with their customers, we support the exemptive authority granted to the FDIC and the FHLBB under section 11 to exclude certain types of transactions from the provisions of that section.

Accordingly, we recommend that the President approve S. 3164.

Sincerely,

Frank Wille

Frank Wille
Chairman

VETERANS ADMINISTRATION
OFFICE OF THE ADMINISTRATOR OF VETERANS AFFAIRS
WASHINGTON, D.C. 20420

December 17, 1974

The Honorable
Roy L. Ash
Director, Office of
Management and Budget
Washington, D. C. 20503

Dear Mr. Ash:

This is in reply to the request of the Assistant Director for Legislative Reference for the Veterans Administration's comments on the enrolled enactment of S. 3164, 93d Congress.

The bill would establish procedures and regulate certain aspects in the settlement of residential real property transfers involving Federally related mortgage loans. The bill's purpose is to provide more effective advance disclosure of settlement costs, the elimination of kickbacks, and a reduction in the amount a borrower is required to deposit in a tax and insurance escrow account.

Section 4 of the bill provides that the Secretary of Housing and Urban Development, in consultation with the Administrator of Veterans Affairs, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, shall develop a uniform settlement statement which is to be combined with the Truth in Lending statement. The Secretary is also directed to prepare and distribute information booklets to help borrowers "understand the nature and costs of real estate settlement services."

All lenders making Federally related mortgage loans must provide the borrower, prospective seller, and (if

applicable) the Federal agency insuring, guaranteeing, or otherwise assisting such loan, an itemized disclosure, in writing, of all charges that will arise in connection with the settlement. The bill also limits the amount that a lender may compel a borrower to place in an escrow account for the payment of taxes and insurance. Kickbacks incident to settlement services are prohibited and both civil and criminal penalties are provided for violation of this prohibition.

The bill further instructs the Secretary of Housing and Urban Development, in consultation with the Veterans Administration, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, and after study, investigation and hearings, to report to the Congress, in not less than three or more than five years after the effective date of the act, whether any further settlement cost legislation is necessary. This bill does not affect the authority of VA or HUD to prescribe standards governing the amount of settlement costs allowable, as provided in section 701 of the Emergency Home Finance Act of 1970 (Public Law 91-351).

While this bill appears to be a desirable attempt to protect homebuyers, we do not believe it will accomplish its intended purpose. The bill does not attempt to deal with discount points, which tend to be a major cost in the transfer in residential real property. Although discounts must be paid by the seller, they are often indirectly paid by buyers in the form of higher selling prices. This bill creates additional burdens and work for lenders, who will invariably pass on their extra costs to borrowers or sellers in the form of either higher interest rates or discounts.

We believe that the extra time required for the lender to complete the disclosure statements required by this bill and to obtain cost data from the other parties performing settlement services will often result in closings being delayed.

Notwithstanding the above, we recognize the advance disclosures required by this bill could prove beneficial to

some homebuyers. Further, we support the provisions calling for a uniform settlement statement and settlement information booklet. Finally, we believe the studies required by the bill could produce beneficial results.

The Veterans Administration has no objection to approval of this measure by the President. However, since the bill is primarily of interest to the Department of Housing and Urban Development, we defer to the views of the Secretary.

Sincerely,

RICHARD L. ROUDEBUSH
Administrator

THE GENERAL COUNSEL OF THE TREASURY
WASHINGTON, D.C. 20220

DEC 19 1974

Director, Office of Management and Budget
Executive Office of the President
Washington, D. C. 20503

Attention: Assistant Director for Legislative Reference

Sir:

Reference is made to your request for the views of this Department on the enrolled enactment of S. 3164, "Real Estate Settlement Procedures Act of 1974."

Section 4 of the enrolled enactment would direct the Secretary of Housing and Urban Development, in consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, to develop a standard real estate settlement form for all transactions which involve federally related mortgage loans. Section 6(a) would require any lender to provide the prospective borrower and any Federal agency involved in the loan, at least 12 days prior to settlement, an itemized disclosure of settlement costs. Section 6(c) would permit the 12 day period to be waived if the prospective borrower executes, under terms and conditions prescribed by regulations to be issued by the Secretary of HUD after consultation with the appropriate Federal agencies, a waiver of that requirement.

Section 14 would require the Secretary, after consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, to report to the Congress on the necessity for further legislation in this area.

The Department would have no objection to a recommendation that the enrolled enactment be approved by the President. However, we request that the Comptroller of the Currency also be consulted

concerning these matters, since all national banks subject to the Comptroller of the Currency's regulations would be affected by the enrolled enactment.

Sincerely yours,

General Counsel

ASSISTANT ATTORNEY GENERAL
LEGISLATIVE AFFAIRS

Department of Justice
Washington, D.C. 20530

DEC 19 1974

Honorable Roy L. Ash
Director
Office of Management
and Budget
Washington, D. C. 20503

Dear Mr. Ash:

In compliance with your request, I have examined a facsimile of the enrolled bill, S.3164, "To further the national housing goal of encouraging homeownership by regulating certain lending practices and closing and settlement procedures in federally related mortgage transactions to the end that unnecessary costs and difficulties of purchasing housing are minimized, and for other purposes."

The purpose of this bill is to effect certain changes in the settlement process for residential real estate in federally related mortgage transactions that will result in:

(1) more effective advance disclosure to home buyers and sellers of settlement costs;

(2) the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services;

(3) a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance; and

(4) significant reform and modernization of local recordkeeping of land title information.

The Department of Justice has no objection to Executive approval of this bill.

Sincerely,

W. Vincent Rakestraw
Assistant Attorney General

FEDERAL TRADE COMMISSION
WASHINGTON, D. C. 20580

LEWIS A. ENGMAN
CHAIRMAN

December 18, 1974

The Honorable Roy L. Ash
Director, Office of Management and Budget
Executive Office of the President
Washington, D.C. 20503

Dear Mr. Ash:

This is in response to your request for the views of the Federal Trade Commission upon Enrolled Bill S. 3164, the "Real Estate Settlement Procedures Act of 1974."

The Commission believes that increasing disclosure of settlement costs and eliminating certain abusive practices is a significant step toward ensuring that the costs to the home buyer will not be unreasonably inflated. We, therefore, support the purposes of this Act but defer to the views of the agencies charged with its administration respecting specific provisions and an estimate of costs.

By direction of the Commission.

Lewis A. Engman
Chairman

To- Warren Hendricks
12-19-74
6:00 p.m.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

DEC 19 1974

MEMORANDUM FOR THE PRESIDENT

Subject: Enrolled Bill S. 3164 - Real Estate Settlement Procedures Act of 1974
Sponsor - Sen. Brock (R) Tennessee

Last Day for Action

December 24, 1974 - Tuesday

Purpose

Establishes new procedures, requirements, and penalties relating to the settlement process on real estate transfers involving federally related mortgage loans, including requirements for greater advance disclosure of the nature and costs of settlement services, prohibitions on kickbacks and referral fees, reductions in escrow account payments, and provisions aimed at reform and modernization of local recordkeeping of land title information.

Agency Recommendations

Office of Management and Budget	Approval
Department of Housing and Urban Development	Approval
Federal Home Loan Bank Board	Approval
Federal Deposit Insurance Corporation	Approval
Veterans Administration	No objection, but defers to HUD
Department of the Treasury	No objection
Department of Justice	No objection
Federal Trade Commission	Defers to other agencies

Discussion

S. 3164 is designed to address, at the Federal level, certain problem areas in the real estate settlement process--abusive practices that increase settlement costs to home buyers, a

lack of understanding about the process and its costs, and complexities and inefficiencies in the present system for the recording of land titles on the public records.

The first legislation enacted by the Congress regarding settlement costs was section 701 of the Emergency Home Finance Act of 1970 which directed HUD and VA to prescribe standards governing the amounts of settlement costs allowable in connection with financing of FHA-insured and VA-guaranteed mortgages. As explained further below, HUD testified during hearings on the current bill that this provision is undesirable and unworkable, and recommended its repeal. The House-passed bill would have repealed section 701, but the Senate bill did not provide for its repeal, nor does the enrolled bill.

Apart from that aspect, the Administration generally did not object to S. 3164 during its consideration by the Congress.

In your letter of December 4, 1974 to State and local officials dealing with the Nation's anti-inflation efforts, you cited real estate settlement fees as an example of price-fixing arrangements which should be reexamined by those officials within their jurisdictions. It is worthy of note that there are several features of S. 3164 which tend toward a possible future expansion of the Federal role in regulating the real estate settlement process. Most notably, the bill would require the Secretary of HUD, after consultation with certain other agencies, to report to the Congress within 3 to 5 years on the need for further legislation on real estate settlements. This report would have to include recommendations on (1) the desirability of requiring lenders of federally related mortgage loans to bear particular costs that would otherwise be paid for by borrowers, (2) whether Federal regulation of settlement charges in connection with such loans is necessary and desirable, and (3) the ways in which the Federal Government can assist local efforts to modernize the recordation of land title information.

The enrolled bill would also override provisions of State law which are inconsistent with its provisions, except where the State law gives greater protection to the consumer.

Major provisions of S. 3164

Effective 180 days after enactment, S. 3164 would provide a variety of means for dealing with real estate settlement problems cited above. Its provisions would apply to all settlement transactions involving a "federally related mortgage loan," a term so broadly defined in the bill that it would cover a high percentage of all residential real estate mortgage loans involving properties for occupancy by 1 to 4 families.

More specifically, the major provisions of the bill would:

-- require HUD to prescribe a standard settlement cost form itemizing all charges imposed by the borrower and seller in covered settlement transactions and including the information required under the Truth In Lending Act.

-- require lenders at the time of the loan commitment or at least 12 days before closing to provide the borrower, seller, or any related Federal agency an itemized disclosure of each settlement charge on the standard form developed by HUD.

-- require HUD to prepare, and lenders to distribute to homebuyers, special information booklets explaining the nature and cost of settlements. On a demonstration basis, in selected housing market areas, the Secretary would be required to include in the booklets statements of the range of costs for specific settlement services in such areas. A report on this demonstration, including the feasibility of providing such information on a nationwide basis, would have to be delivered to the Congress by June 30, 1976.

-- prohibit false information, referral fees, kickbacks, and other unearned fees in covered settlement transactions, and prohibit fees for the preparation of Truth-In-Lending and uniform settlement statements.

-- prohibit sellers of property from requiring that title insurance be purchased from any particular title company.

-- require lenders making mortgage loans on existing property at least one year old to confirm that the seller has informed the buyer of the name and address of the seller;

the seller's purchase date; and the date and purchase price of the last "arm's length" transaction involving the property, if it has been held less than two years, and not been used by the seller as a residence.

-- limit the amount that a lender could require a borrower to deposit in escrow accounts to ensure the payment of real estate taxes and insurance.

-- provide for the identification of "straw parties" by requiring disclosure to federally insured or regulated financial institutions of the identity of a person receiving the beneficial interest of a federally related mortgage loan and making such information available, on request, to the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board.

Civil and/or criminal penalties would be imposed for violations of key provisions of the enrolled bill, such as failure to disclose required information, providing false information, and giving or receiving kickbacks and unearned fees.

Section 701 repeal

As indicated above, the most controversial issue with respect to this legislation was the repeal of section 701 of the Emergency Home Finance Act of 1970, which directed HUD and VA to prescribe standards governing settlement costs on their mortgage transactions.

The enrolled bill does not repeal section 701, as the Administration had urged. HUD had pointed out in testimony that attempting to regulate settlement costs nationwide would be virtually impossible in view of the wide variances in settlement practices and that, if such an attempt were workable, it would require an extensive bureaucracy and very high administrative costs widely out of proportion to the benefits that would be received by consumers.

While deciding not to include repeal of section 701 in S. 3164, the conference report on the bill states:

> "The conferees recognize that section 701 authority is not currently being used. However, it is agreed that continuation of this stand-by authority is

> desirable for its deterrent effect and can, in fact, facilitate the achievement of the purposes of the Act. It should be understood, however, that nothing in the Act is intended to preclude the Secretary's use of Section 701 authority at any time he finds it necessary to curb abuses in specific market areas."

HUD's attached letter on the enrolled bill states, "...it is not anticipated that mere retention on the statute books of section 701 will pose any immediate difficulty. Nor will its continued existence, in our opinion, of itself require the Secretary to undertake to implement it by establishing maximum settlement charges. Rather, as we view it -- and we believe the Congress shares this view -- section 701 confers stand-by authority whose use is dependent on a determination by the Secretary and/or Administrator of the need for its implementation to curb abuses in specific areas." Since S. 3164 would not require Federal regulation of settlement costs and the congressional guidance allows discretion, HUD's interpretation appears plausible.

Recommendations

HUD, in its letter on the enrolled bill, concludes: "In sum, we believe that while it is not precisely what the Administration recommended or what it desires, the enrolled enactment of S. 3164, considered on balance, is clearly desirable legislation. Accordingly, we recommend that the President give his approval to the measure."

VA has no objection to approval of the bill, but does not believe that it will accomplish its intended purpose of protecting homebuyers despite certain beneficial provisions. VA notes that the bill does not deal with discount points; creates additional work for lenders, who will pass on their extra costs to borrowers or sellers in the form of higher interest rates or discounts; and will often result in closings being delayed because of the time required to obtain cost data and to complete disclosure statements.

The Federal Home Loan Bank Board notes that "While there are a small number of provisions in the bill which the Bank Board has in the past opposed, on balance there is far more to recommend its enactment."

The other agencies whose views were requested either recommend approval or have no objection to approval.

* * * * *

While repeal of section 701 would have been desirable, S. 3164 has the effect of deferring the major question of Federal regulation of settlement costs until HUD has studied the issue and reports to the Congress several years hence. Accordingly, we concur with HUD's recommendation that you approve the bill.

Wilfred H Rommel

Assistant Director for
Legislative Reference

Enclosures

Calendar No. 838

93D CONGRESS
2d Session

SENATE

REPORT
No. 93-866

PROVIDING FOR GREATER DISCLOSURE OF THE NATURE AND COSTS OF REAL ESTATE SETTLEMENT SERVICES

MAY 22, 1974.—Ordered to be printed

Mr. BROCK, from the Committee on Banking, Housing and Urban Affairs, submitted the following

REPORT

Together with

ADDITIONAL VIEWS

[To accompany S. 3164]

The Committee on Banking, Housing and Urban Affairs, to which was referred the bill (S. 3164) to provide for greater disclosure of the nature and costs of real estate settlement services, to eliminate the payment of kickbacks and unearned fees in connection with settlement services provided in federally related mortgage transactions, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill do pass.

INTRODUCTION

The first legislation enacted by Congress regarding settlement costs was section 701 of the Emergency Home Finance Act of 1970 (P.L. 91-351) which directed the Secretary of Housing and Urban Development and the Administrator of Veterans Affairs to prescribe standards governing the amounts of settlement costs allowable in connection with financing of FHA-insured and VA-guaranteed mortgages. The provision also directed the HUD Secretary and VA Administrator to undertake a joint study and make recommendations to Congress with respect to legislative and administrative actions which should be taken to reduce and standardize mortgage settlement costs by July 24, 1971.

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This Mortgage Settlement Cost Report was transmitted to Congress on February 17, 1972, and proposed regulations setting specific dollar limits for various settlement services in six metropolitan areas were issued in July of 1972. These proposed regulations were not issued in final form, pending further study by HUD of many questions raised following the publication of the preliminary regulations. HUD officials testified that the regulations were not developed on the basis of an analysis of cost and profits involved in providing these services.

The HUD–VA Report and subsequent hearings by the Housing Subcommittee found three major problem areas that must be dealt with if settlement costs are to be kept within reasonable bounds:

(1) Abusive and unreasonable practices within the real estate settlement process that increase settlement costs to home buyers without providing any real benefits to them;

(2) The lack of understanding on the part of most home buyers about the settlement process and its costs, which lack of understanding makes it difficult for a free market for settlement services to function at maximum efficiency; and

(3) The basic complexities and inefficiencies in the present system for the recording of land titles on the public records, which has been identified as the single most important barrier to reduce significantly the present level of settlement costs.

In the HUD-VA Report, the Secretary of HUD and the Administrator of the VA stated that the Federal Government should take immediate action to establish maximum allowable settlement charges on FHA-VA transactions in specific housing market areas, excepting loan discount payments and charges fixed by State and local governments, and to require use of a uniform settlement statement and submission of estimated settlement costs and related information prior to settlement.

Prior to the release of the HUD-VA Report, Senator Proxmire introduced S. 2775 which would require the lender to bear certain settlement costs with the view that the lenders have the sophistication and bargaining power to keep the costs down. No action was taken on S. 2775 other than hearings. However, the Senate-passed Housing and Urban Development Act of 1972, contained provisions authorizing HUD to prescribe standards for closing costs allowable not only in FHA and VA transactions but also in other federally-related mortgages and, in addition, to outlaw kickbacks. The House Banking and Currency Committee included in its version of the Housing and Urban Development Act of 1972 a closing cost title which would require advance disclosure of settlement costs and prohibit kickbacks, but, contrary to the Senate bill, would have eliminated any authority for HUD to prescribe maximum limits for settlement services. Both bills died with the end of the 92nd Congress.

In the 93rd Congress, two settlement cost bills were introduced and referred to the Committee in July 1973, S. 2228 by Senator Brock and S. 2288 by Senator Proxmire. Although S. 2228 and S. 2288 were similar in scope, they differed with respect to the authority of HUD and VA to regulate charges for settlement services. S. 2228 proposed to eliminate the authority contained in section 701 of the Emergency Home Finance Act of 1970 for HUD and VA to prescribe standards for settlement costs. S. 2288 proposed, on the other hand, that HUD establish maximum amounts of settlement charges in virtually all

mortgage transactions within 180 days after the date of enactment. Hearings on these proposals were held in July and October 1973, by the Subcommittee. Late in 1973, Senator Brock offered S. 2228 as an amendment to the Housing and Community Development legislation then being considered by the full Committee in executive session but no action was taken.

During the 2nd session of the 93rd Congress, Senator Brock introduced S. 3164 broadening the scope of S. 2228. S. 3164 added the requirement that HUD study and report to Congress on the need for legislation which would (1) require lenders to bear settlement costs, (2) regulate maximum settlement rates, and (3) assist local governments to modernize title recordation procedures. Senator Proxmire introduced S. 3232 which would require mortgage lenders to bear the expense of closing costs. On May 2, 1974, the Committee met in executive session and adopted S. 3164 without amendment.

As pointed out by the Chairman of the Federal Home Loan Bank Board, there are two basic approaches that can be taken in solving the problems of settlement costs. One approach is to regulate closing costs directly, that is to provide for legal maxima on the charges which may be imposed for services incident to real estate settlements. This approach is the one taken in S. 2288. The second approach is to regulate the underlying business relationships and procedures of which the costs are a function. This is the approach employed in S. 3164 adopted by the Committee.

S. 3164 would proceed directly against the problem areas pointed out above in three basic ways: (1) by prohibiting or regulating abusive practices, such as kickbacks, unearned fees, and unreasonable escrow accounts; (2) by requiring that home buyers be provided both with greater information on the nature of the settlement process and with an itemized statement of all settlement charges well in advance of settlement; and (3) by taking steps toward the simplification of the land recordation process, by establishing, on a demonstration basis in various areas of the United States, a model systems for the recordation of land parcels in a manner calculated to facilitate and simplify land transfers and mortgage transactions.

By dealing directly with such problems as kickbacks, unearned fees, and unreasonable escrow account requirements, the Committee believes that S. 3164 will ensure that the costs to the American home buying public will not be unreasonably or unnecessarily inflated by abusive practices. By making information on the settlement process available to home buyers in advance of settlement and requiring advance disclosure of settlement charges, it is expected that many unnecessary or unreasonably high settlement charges will be reduced or eliminated. Home buyers who would otherwise shop around for settlement services, and thereby reduce their total settlement costs, are presently prevented from doing so because frequently they are not apprised of the costs of these services until the settlement date or are not aware of the nature of the settlement services that will be provided. The disclosure provisions of S. 3164 should ameliorate or eliminate such problems. By assisting in the establishment of simplified land recordation systems, the Committee hopes to reduce the time and effort presently involved in the searching of real estate titles. A substantial portion of the fees presently charged for title examination and related services can be eliminated if the work that must be done

under the present chaotic recording systems can be significantly reduced by the institution of modern computerized recordation systems. In the long run, this aspect of S. 3164 may be the single most important feature of the legislation from the standpoint of making significant reductions in the present level of settlement charges.

While the Committee believes the Federal rate regulation is not the preferred solution at this time, and that the antiabuse, disclosure and reform provisions of this bill offer the brightest prospect for keeping settlement cost to reasonable levels, it has included in section 10 a provision calling upon the Secretary of HUD to monitor the implementation of the various provisions of the bill and to report back to the Congress on what further legislation may be needed in this area. Section 10(b) would specifically call for the Secretary's recommendations in three areas that were of particular concern to some of the witnesses who testified at the congressional hearings: First, whether it is desirable to have lenders bear the costs of particular settlement services presently paid for by the borrower; second, whether Federal regulation of settlement charges is necessary and desirable, and if so, what sort of regulatory procedure should be adopted by the Congress; and third, what sort of incentives can be provided to local governments to improve and modernize their system for the recordation of land title information. The report required by section 10 is designed to insure that the actions called for in the bill are effective and, if they are not, to provide the Congress with the necessary information to permit it to act promptly on whatever further legislation is needed.

REPEAL OF FEDERAL RATE REGULATION OF SETTLEMENT CHARGES

The Committee had before it proposals which embraced the concept of Federal rate regulation of real estate settlement charges for both FHA and VA insured mortgages, as well as most conventional mortgages. The Committee believes that such an approach at the present time is unwarranted and believes that more time and study is needed on this question before mandating any Federal regulation of real estate settlement charges.

There are a number of reasons for the conclusion that the Federal Government should not be involved in the fixing of rates for real estate settlement charges at this time:

(1) Federal rate controls are warranted only if there are clear and convincing findings that settlement charges are unreasonably high on a widespread basis throughout the Nation and there is no other more practical way to deal with the problem. Neither of these findings has been made to date. The 1972 HUD–VA Report on Mortgage Settlement Costs found that "unreasonable costs probably occur in fewer areas than may be popularly assumed." Nor did the study specifically conclude that Federal rate regulation was the only means for dealing with the abuses uncovered.

(2) There are other more practical ways to deal with the problem than by having the Federal Government regulate rates. One way to deal with the problems and abuses in the real estate settlement process is to deal with those problems and abuses directly. This is precisely what S. 3164 as reported by the Committee would do.

(3) While there is undoubtedly a Federal interest in ensuring settlement costs, particularly in FHA or VA transactions, are no unreasonably high, it does not follow that the Federal Government should

place tens of thousands of individuals or businesses that supply settlement services under Federal rate-making simply because there are abuses or problems in certain areas of the country. This is particularly true when the causes of the problems and abuses can be dealt with directly.

(4) A large bureaucracy would have to be developed within HUD if rates are to be established in accordance with the reasonable and fair procedures required in other instances of rate-making. If such procedures are not adopted, then there may be no way to protect legitimate interests from the establishment of arbitrary and unfair decisions that may result if rates are set in the absence of the usual rate-setting safeguards.

(5) Federal authority to establish rates for settlement charges would infringe on an area that has historically been of State or local concern and, in some instances, would duplicate existing State regulatory schemes.

For these reasons, the Committee recommends that Federal rate regulation not be imposed at this time and that any decision on further legislative action be deferred until the Secretary of HUD reports to the Congress as provided under section 10.

Explanation of the Bill

UNIFORM SETTLEMENT STATEMENT

Section 4 requires that a uniform settlement statement is to be prepared by the Secretary of HUD in consultation with various Federal agencies and is to be used as the standard settlement form for all transactions in the United States which involve federally related mortgage loans. Because of the differences that exist in legal and administrative requirements and practices in various areas of the country, the uniform settlement statement may contain minimum variations that are necessary to reflect these differences across the country. The form is also intended to include all of the information and data required to be provided under the Truth-in-Lending Act and the regulations thereunder, so that by combining the settlement statement with the Truth-in-Lending form, more effective disclosure can be made to the home buyer.

SPECIAL INFORMATION BOOKLETS

Section 5 directs that the Secretary of HUD prepare and distribute special information booklets to help persons borrowing money to finance the purchase of a home to understand better the nature and costs of real estate settlement services. These booklets, which may be prepared by lenders if their form and content are approved by the Secretary, are to be distributed to the home buyer at the time he files a mortgage loan application.

ADVANCED DISCLOSURE OF SETTLEMENT COSTS

Section 6 requires that any lender agreeing to make a federally related mortgage loan must provide to the home buyer and the seller, at least ten days prior to settlement, an itemized disclosure of each charge arising in connection with the settlement. This disclosure would be made upon the uniform settlement statement to be developed under

section 4 of the bill. The Committee wants to make clear that the home buyer would not be obligated to pay the amounts itemized on the advanced disclosure unless and until he specifically agreed to do so.

PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES

Section 7 is intended to prohibit all kickback or referral fee arrangements whereby any payment is made or "thing of value" furnished for the referral of real estate settlement business. The section also prohibits a person or company that renders a settlement service from giving or rebating any portion of the charge to any other person except in return for services actually performed. Reasonable payments in return for services actually performed or goods actually furnished are not intended to be prohibited.

In a number of areas of the country, competitive forces in the conveyancing industry have led to the payment of referral fees, kickbacks, rebates and unearned commissions as inducements to those persons who are in a position to refer settlement business. Such payments may take various forms. For example, a title insurance company may give 10% or more of the title insurance premium to an attorney who may perform no services for the title insurance company other than placing a telephone call to the company or filling out a simple application. A discount or allowance for the prompt payment of a title insurance premium or other charge for a settlement service may be given to realtors or lenders as a rebate for the placement of the business with the individual or company giving the discount. An attorney may give a portion of his fee to another attorney, lender or realtor who simply refers a prospective client to him. In some instances, a "commission" may be paid by a title insurance company to a corporation that is wholly-owned by one or more savings and loan associations, even though that corporation performs no substantial services on behalf of the title insurance company.

In all of these instances, the payment or thing of value furnished by the person to whom the settlement business is referred tends to increase the cost of settlement services without providing any benefits to the home buyer. While the making of such payments may heretofore have been necessary from a competitive standpoint in order to obtain or retain business, and in some areas may even be permitted by state law, it is the intention of section 7 to prohibit such payments, kickbacks, rebates, or unearned commissions.

Subsection 7(c) makes clear that section 7 is not intended to prohibit the payment by title insurance companies, attorneys, lenders and others for goods furnished or services actually rendered, so long as the payment bears a reasonable relationship to the value of the goods or services received by the person or company making the payment. To the extent the payment is in excess of the reasonable value of the goods provided or services performed, the excess may be considered a kickback or referral fee proscribed by section 7. Those persons and companies that provide settlement services should therefore take measures to ensure that any payments they make or commissions they give are not out of line with the reasonable value of the services received. The value of the referral itself (i.e., the additional business obtained thereby) is not to be taken into account in determining whether the payment is reasonable.

Subsection 7(c) specifically sets forth the types of legitimate payments that would not be proscribed by the section. For example, commissions paid by a title insurance company to a duly appointed agent for services actually performed in the issuance of a policy of title insurance would not be proscribed. Such agents, who in many areas of the country may also be attorneys, typically perform substantial services for and on behalf of a title insurance company These services may include a title search, an evaluation of the title search to determine the insurability of the title (title examination), the actual issuance of the policy on behalf of the title insurance company, and the maintenance of records relating to the policy and policy-holder. In essence, the agent does all of the work that a branch office of the title insurance company would otherwise have to perform. Similarly, the payment of a bona fide salary or other compensation for goods or facilities actually furnished or services actually performed would not be prohibited by section 7.

Subsection 7(d) imposes both criminal and civil penalties on any person or persons who violate the provisions of the section. The criminal penalty may be a fine of up to $10,000 or imprisonment for up to one year or both. In addition, any person or persons who violate the provisions of the section shall be liable to the person whose business has been referred for three times the amount of the proscribed payment, kickback or referral fee.

LIMITATION ON REQUIREMENT OF ADVANCE DEPOSITS IN ESCROW ACCOUNTS

Section 8 is designed to limit the amounts that lenders can require home buyers to pay into escrow accounts established to ensure the payment of real estate taxes and insurance. At the present time, many lenders require that a home buyer establish such an account at the time of settlement and pay as much as 6 months, one year or even two years advance taxes and insurance premiums into this account. Section 8 would limit the amount of these payments at the time of settlement in the following manner: (1) in jurisdictions where taxes and insurance premiums are post-paid, the borrower could not be required to deposit more than the amount of taxes and insurance premiums that will be due and payable on the date of settlement plus the pro rata portion of such taxes and premiums that has already accrued, and (2) in jurisdictions where taxes and insurance premiums are pre-paid, the borrower could not be asked to deposit more than the pro rata portion of the estimated taxes and insurance premiums based on the number of months from the last payment date to the date of settlement. In both cases, lenders may also require one-twelfth of the taxes and insurance premiums estimated to become due and payable during the twelve months following the date of settlement. After the date of settlement, a lender may only require the borrower to deposit in any one month one-twelfth of the total taxes and insurance premiums that will be due and payable during the year. In those areas where excessive escrow requirements have been imposed on home buyers, this provision will result in substantial savings to the home buyer at the time of settlement without substantially interfering with the legitimate requirements of lenders for some assurance that real estate taxes and insurance premiums will continue to be paid on the property.

ESTABLISHMENT ON DEMONSTRATION BASIS OF LAND PARCEL RECORDATION SYSTEM

Section 9 would direct the Secretary of HUD to establish, on a demonstration basis, model land recordation systems in various parts of the country in the hope of effecting fundamental improvements in the present systems utilized by local governments for the recordation and indexing of land title information. Virtually all of the witnesses in the recent Senate hearings on closing and settlement costs testified as to the urgent need for the Federal Government to take meaningful steps in this area to assist local governments in improving and modernizing their land record systems. The January, 1972, Report by American University to HUD on "The Real Estate Settlement Process and Its Costs" concluded that "the root problem involved in reducing costs is reform and reorganization of public land records." Section 9 is designed to meet this problem by having HUD establish on a demonstration basis in various areas, recordation systems that can be used as a model by local governments who wish to modernize their own antiquated systems. The experience gained from these models should prove invaluable in the determination of how basic reforms in land parcel indexing and recording can be achieved.

REPORT OF THE SECRETARY ON NECESSITY FOR FURTHER CONGRESSIONAL ACTION

Section 10 is designed to achieve two purposes. First, subsection (c) would repeal Section 701 of the Emergency Home Finance Act of 1970. This is the section of law that authorized and directed the Secretary of HUD and the Administrator of Veterans' Affairs to prescribe standards governing amounts of settlement costs allowable in connection with charges of hundreds of thousands of attorneys, title companies, surveyors, pest and fungus inspectors, and others who provide settlement services in FHA and VA assisted mortgage transactions. Testimony presented by various consumer, industry and government witnesses in Congressional hearings held during the past year have demonstrated that Federal rate regulation of settlement charges would be both unwise and unworkable. Both the Department of Housing and Urban Development and the Federal Home Loan Bank Board has testified in opposition to Federal rate regulation of settlement charges and have urged the repeal of Section 701 of the Emergency Home Finance Act of 1970.

Second, section 10 would direct the Secretary of HUD to monitor the implementation of the various anti-abuse and disclosure provisions of the bill and report back to the Congress no sooner than three and no later than five years from the effective date of the Act on whether there is any necessity for further legislation in this area. If he concludes that there is need for further Congressional action, he is to report on the specific practices or problems that should be the subject of such legislation and the corrective measures that need to be taken. Specifically, section 10 would direct the Secretary to include in his report to the Congress his recommendations on the desirability of requiring lenders of federally related mortgage loans to bear the costs of particular real estate settlement services presently paid for by borrowers and recommendations on whether Federal regulation of settlement charges is necessary and desirable. If he

concludes that such regulation would be necessary and desirable, he is to provide the Congress with a description and analysis of the regulatory scheme he believes the Congress should adopt. The Secretary is also directed to report on the ways in which the Federal government can encourage and assist local governments to improve and modernize their land title record-keeping systems.

This report will ensure continuing Congressional and administrative attention to the problems of unnecessarily high settlement charges even after the passage of the bill. This continuing concern itself will help to ensure that changes are affected in the real estate settlement process over the next three years. Moreover, the report called for by section 10 will provide the Congress with the information it needs to make a reasoned judgment as to the various alternatives that might be considered if the provisions of the bill are not totally effective in ensuring that home buyers pay only reaasonable charges for necessary settlement services.

FEE FOR PREPARATION OF TRUTH-IN-LENDING AND UNIFORM SETTLEMENT STATEMENTS

Section 11 would prohibit lenders from imposing on borrowers any fee or charge for the preparation of the Truth-in-Lending statement or any other disclosure statement called for by the provisions of the bill.

SECTION-BY-SECTION SUMMARY

Section 1. Short title.—The Act is cited as the "Real Estate Settlement Procedure Act of 1974."

Section 2. Findings and Purpose.—The section sets forth two Congressional findings: (1) that significant reforms in the real estate settlement process are needed to provide consumers with greater and more timely information on the nature and costs of the settlement process and to protect them from unnecessarily high settlement charges that are the result of certain abusive practices that have developed in some areas of the country, and (2) that the time has come for the Congress to implement the recommendations contained in the 1972 HUD–VA Report to the Congress on "Mortgage Settlement Costs" that was prepared in accordance with Section 701(b) of the Emergency Home Finance Act of 1970.

Section 2 also sets forth the four basic purposes that the Congress intends to achieve in enacting the bill. These include: (1) that more effective advance disclosure of settlement costs is provided to home buyers and sellers, (2) that kickbacks or referral fees that unnecessarily increase settlement costs are eliminated, (3) that reductions are affected in the amounts home buyers are frequently required to place in escrow accounts established to ensure the payment of real estate taxes and insurance, and (4) that significant first steps are taken by the Federal government to help effect reform and modernization of local record-keeping in regard to land title information.

Section 3. Definitions.—This section defines terms used in the Act. (1) "Federally-related mortage loan" would include any loan secured by 1- to 4-family residential real property including condominiums and cooperatives which is (a) made by any lender who is regulated by an agency of the Federal Government or whose deposits or accounts

are insured by an agency of the Federal Government, (b) made or insured or assisted by any officer or agency of the Federal Government or under a housing or urban development or related program administered by any such officer or agency, (c) eligible for purchase by FNMA, GNMA, or the Federal Home Loan Mortgage Corporation, or by any institution from which it could be purchased by the Federal Home Loan Mortgage Corporation, or (d) made by any "creditor" who makes or invests in residential real estate loans aggregating $1 million or more a year. (2) "Thing of value" would include any payment, advance, funds, loan, service, or other consideration. (3) "Person" would include individuals, corporations, associations, partnerships, and trusts; (4) "Settlement services" would include any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports, or appraisals, pest and fungus inspections, services rendered by a realtor, and the handling of the processing, and closing or settlement; (5) "Secretary" would mean the Secretary of Housing and Urban Development.

Section 4. Uniform Settlement Statement.—This section requires that the Secretary, after appropriate consultation, develop a single standardized form for the statement of settlement costs which will be used in all transactions involving federally-related mortgage loans. Charges imposed on both borrower and seller must be clearly and conspicuously itemized. The form is to indicate whether the title insurance premium included in the charges covers the lender's interest or the borrower's interest or both. The form may be used to satisfy the requirements of the Truth-in-Lending Act (and would include the information required by that Act).

Section 5. Special Information Booklets.—Subsection (2) of this section requires the Secretary to distribute booklets to lenders for use by persons borrowing money to finance the purchase of residential real estate, to assist them in understanding the nature and cost of real estate settlements.

Subsection (b) requires that the booklets include an explanation of the nature of costs incident to real estate settlements, a sample of the standard settlement form, an explanation of the nature of escrow accounts, an explanation of the manner of selecting persons to provide necessary services, and an explanation of unfair practices and charges to be avoided. These booklets should take into account differences by region in law and procedure.

Subsection (c) requires lenders to provide this booklet to any person seeking a loan to finance a residential real estate purchase, at the time of application.

Subsection (d) permits lenders to print and distribute these booklets when approved by the Secretary.

Section 6. Advance Disclosure of Settlement Costs.—Subsection (a) of this section requires lenders to provide borrowers at least 10 days prior to settlement with an itemized disclosure of all settlement charges. In the event the exact amount of any such charge is not available, a good faith estimate of such charge may be provided.

Subsection (b) imposes a penalty on lenders failing to comply with this requirement, in an amount equal to the greater of actual damages

or $500, plus legal costs and an attorney's fee where a successful action has been brought. Penalties will not be imposed if the violation was unintentional and resulted from bona fide error.

Subsection (c) provides that the 10-day advance disclosure requirement will be deemed satisfied if the lender makes the disclosure at any time prior to settlement and the borrower waives the 10-day requirement.

Subsection (d) provides that no borrower shall maintain an action both under this section and the provisions of section 130 of the Consumer Protection Act of 1968.

Section 7. Prohibition against Kickbacks and Unearned Fees.—Subsection (a) of this section prohibits any person from giving or receiving any fee, kickback, or thing of value pursuant to any agreement that business incident to a real estate settlement involving a federally-related mortgage loan shall be referred to any person.

Subsection (b) prohibits the acceptance of any portion of any charge for the rendering of a real estate settlement service other than for services actually performed.

Subsection (c) provides that the section does not apply in certain enumerated situations where services are actually performed.

Subsection (d) imposes a fine of not more than $10,000 or imprisoned for not more than one year, or both on any person who violates the provisions of this section.

In addition, any person who violates the provisions of subsection (a) is liable in a civil action for treble damages sustained by injured parties.

Section 8. Limitation on Requirement of Advance Deposits in Escrow Accounts.—This section prohibits any requirement by a lender that a borrower deposit in an escrow account in advance of settlement a sum in excess of the total amount of taxes and insurance due and payable prior to or on the date of settlement (or a pro rata portion of the estimated taxes and insurance where such taxes and insurance are prepaid) plus one-twelth of the amount which will become payable during the following year. It would also prohibit a requirement of deposit in an escrow account in any month beginning on or after settlement of a sum exceeding one-twelth of the amount of taxes and insurance payable during the year following (except to the extent necessary to cover a deficiency which will exist on the due date).

Section 9. Establishment on Demonstration Basis of Land Parcel Recordation Systems.—This section authorizes the Secretary to establish on a demonstration basis in various areas a computerized system for recording land parcels, in order to facilitate real estate transfers and transactions and to reduce costs.

Section 10. Report of the Secretary on Necessity for Further Congressional Action.—Subsections 10(a) and (b) require the Secretary in consultation with the VA, FDIC, and FHLBB and after investigation and hearings, not less than three years nor more than five years from the effective date of the Act, to report to Congress on whether, in view of the implementation of the provisions of the Act, there is any necessity for further legislation in this area.

If the Secretary concludes that there is necessity for further legislation, he shall report to Congress on specific practices or problems that should be the subject of such legislation and the corrective measures that need to be taken. The Secretary shall include in his report recom-

mendations on the desirability of requiring lenders to bear the costs of particular real estate settlement services; recommendations on whether Federal regulation of the charges for real estate settlement services is necessary and desirable, and, if he concludes that such regulation is necessary and desirable, a description and analysis of the regulatory scheme he believes Congress should adopt; and recommendations on the ways in which the Federal Government can assist and encourage local governments to modernize their methods for the recordation of land title information, including the feasibility of financial assistance or incentives.

Subsection (c) repeals section 701 of the Emergency Home Finance Act of 1970.

Section 11. Fee for Preparation of Truth-in-Lending and Uniform Settlement Statements.—This section prohibits the imposition of any fees or charges by lenders for the preparation of statements required by the Truth-in-Lending Act or sections 4 and 6 of the Act.

Section 12. Jurisdiction of Courts.—This section places jurisdiction for the recovery of section 6 or 7 in the United States district court for the district in which the property involved is located, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

Section 13. Validity of Contracts and Liens.—This section provides that nothing in the Act shall affect the validity of any sale or contract arising in connection with a federally-related mortgage loan.

Section 14. Effective Date.—The effective date of the Act is one hundred and eighty days after the date of the enactment.

Estimated Cost of Legislation

This bill does not provide for authorizations for appropriations, however, there will be additional administrative costs required to carry out the purposes of this legislation.

Cordon Rule

In the opinion of the Committee, it is necessary to dispense with the requirements of subsection 4 of the rule XXIX of the Standing Rules of the Senate in order to expedite the business of the Senate in connection with this report.

ADDITIONAL VIEWS OF MR. PROXMIRE

The reporting of the Brock bill, S. 3164, is a major defeat for consumers and a stunning victory for the real estate settlement lobby. After tossing consumers a few crumbs in the way of increased disclosure and other cosmetic reforms, the Brock bill repeals the only authority now on the books for regulating settlement charges on FHA–VA mortgage transactions. If the Brock bill becomes law, the great settlement charge rip off not only will continue, it will get worse. The principal victims will be moderate income homebuyers and sellers who are served by the FHA–VA program and who could be forced into paying hundreds of millions of dollars in higher settlement charges as a result of the Brock bill.

The typical homebuyer is a babe in the woods with pitifully little bargaining power. He is faced with settlement charges pushed on him by experts on a take-it-or-leave-it basis. The abuses have been well documented.

Whatever claims made on behalf of the Brock bill, the best way of judging its impact is to examine who is for it. The main supporters of the Brock bill are title insurance companies, State bar associations, mortgage lenders, real estate agents and other participants in the real estate settlement process. During recent hearings held by the House Banking Committee, 29 witnesses representing the real estate settlement industry testified. All 29 witnesses supported the House counterpart to the Brock bill, H.R. 9989, introduced by Representative Stephens. During these same hearings, seven consumer spokesmen or independent experts were called to testify. Not one of them supported the Stephens-Brock approach.

Legislative History of the Settlement Charge Issue

Members of Congress have received many complaints over the years about excessive settlement charges imposed on home buyers and sellers. In many cases, high settlement charges have depressed the housing market by making it impossible for moderate income families to afford to purchase a home. Congress dealt with the problem in 1970 by enacting Section 701 of the Emergency Home Finance Act of 1970. (P.L. 91–351).

Section 701(a) of the Emergency Home Finance Act authorized and directed the Secretary of HUD and the Administrator of the VA to prescribe standards governing the amounts of settlement costs allowable on FHA–VA mortgage transactions. Such charges were to be based on the Secretary's and the Administrator's estimate of the reasonable charges for necessary services involved in settlements for particular classes of mortgages and loans. Sec. 701(b) directed HUD and VA to undertake a joint study of settlement costs and to report to Congress with respect to legislative and administrative actions which should be taken to reduce mortgage settlement costs.

HUD and VA released the results of their joint study on February 17, 1972. In presenting this study to Congress, former Secretary Romney testified that "Settlement costs are unreasonably high in many areas, but not in all." Shortly before the release of the HUD–VA study, the Washington Post ran a series of articles about excessive settlement charges, kickbacks, and other abusive settlement practices in the Washington metropolitan area.

Following the HUD–VA report and the Post articles, the Senate approved on March 2, 1972, as part of the onmibus 1972 Housing bill, legislation to prohibit real estate kickbacks, to expand HUD's authority to regulate settlement charges to include certain conventional mortgages, and to require that regulations limiting settlement charges be issued within six months. Similar legislation was approved by the Housing Subcommittee of the House Banking Committee on May 11, 1972. The House Subcommittee bill also required that all settlement charges be fully disclosed in a timely manner. Fianlly, on July 4, 1972, HUD published proposed regulations which would have reduced certain settlement charges on FHA transactions by an average of 30% in six metropolitan areas.

Despite the progress achieved by the House and Senate and by HUD, the real estate settlement industry was still hopeful of sidetracking federal regulation of settlement charges. On August 4, 1972, 22 large title insurance companies retained the Washington law firm of Sharon, Pierson, Semmes, and Finley to help them fight federal regulation. The Sharon firm devised a strategy for overturning the House and Senate bills and the proposed HUD regulation. This strategy called for the repeal of Section 701(a) authorizing the regulation of settlement charges. The effect of this blatantly anti-consumer move would be concealed by including the Section 701(a) repealer in a so-called reform bill which adopted the least offensive disclosure and other reforms contained in the House and Senate bills. Those who voted for such a bill could then claim they were for reducing settlement charges while at the same time they repealed the only law on the books for regulating these charges.

On September 13, 1972, Congressman Stephens of Georgia introduced a substitute amendment to the House Subcommittee bill on settlement charges generally along the lines of the recommendations made by the Sharon law firm. The Stephens substitute was approved in Full Committee and included in the omnibus 1972 Housing bill. This bill failed to obtain a rule from the Rules Committee and the entire matter thus died in the 92nd Congress.

Following the death of all settlement cost legislation in 1972, the Department of Housing and Urban Development withdrew its proposed regulations limiting settlement charges. The new Secretary of HUD, James Lynn, and the new FHA Commissioner, Sheldon Lubar, expressed a generally negative attitude towards federal regulation of settlement charges compared with their predecessors. However, Section 701(a) still remained on the books, and from the point of view of the real estate settlement industry, it represented a threat that the authority might be used by a future Secretary of HUD. Accordingly, the Sharon firm renewed its campaign to repeal Section 701(a) on behalf of its large title insurance clients.

On July 23, 1973, Senator Brock introduced S. 2228 which was generally similar to the Stephens substitute amendment of 1972. A

comparable bill, H.R. 9989, was introduced by Congressman Stephens on August 3, 1973. On July 30, 1973, I introduced S. 2288 which was generally similar to the settlement charge legislation included in the 1972 Housing bill passed by the Senate on March 2, 1972. Unlike the Brock-Stephens bill, the Proxmire bill would retain the authority of HUD to regulate settlement charges. This authority would also be extended to cover conventional mortgage transactions as well as FHA–VA mortgage transactions, and regulations limiting settlement charges would be required within six months. The Proxmire bill also contained provisions similar to the disclosure and anti-kickback provision sof the Brock-Stephens bills.

The Senate Banking Committee held hearings on the Brock bill, S. 2228, on July 30, 1973, just seven days after it was introduced. Because of the short time between the bill's introduction and the hearings, consumer organizations were unable to come forward with testimony. However, industry spokesmen were somehow familiar enough with the terms of the Brock bill, so that despite the short notice, 15 witnesses representing the real estate settlement industry appeared at the witness table and furnished the Committee with lengthy written statements. All 15 industry witnesses supported the Brock bill. Another measure of industry support for the Brock bill is revealed by the fact that in discussions with Committee staff, lobbyists for the title insurance industry often referred to the Brock bill as "our bill."

In somewhat belated recognition of the imbalance in its hearing record, the Committee invited additional testimony on the settlement charge issue from consumer spokesmen or other experts not affiliated with the settlement industry. Because of the short notice provided and the Committee's policy of not reimbursing witnesses for their travel expenses, only three witnesses were able to testify on October 3, 1973. These witnesses supported the Proxmire bill and opposed the Brock bill. However, their testimony was squeezed in at the end of a hearing on the Administration's 1973 housing proposals during the course of which the Committee received testimony from 19 witnesses. Under these circumstances it is little wonder that the testimony from consumer spokesmen had virtually no impact on the Committee's perception of the real estate settlement problem.

The Committee considered the settlement cost issue as part of its markup of the Omnibus Housing bill of 1974. The Committee met on December 14, 1973 in an attempt to resolve the differences between the Proxmire bill, which required HUD to issue regulations limiting settlement charges and the Brock bill which repealed HUD's regulatory authority. The Committee, by a vote of 9 to 6, approved a compromise approach offered by Senator Cranston. Under this approach, HUD would retain its authority to regulate settlement charges. However, the authority could not be used for a period of 3 years. If, after this period, HUD concluded on the basis of a hearing that settlement charges were still too high it could issue regulations limiting settlement charges on all mortgage transactions, both conventional and FHA–VA. Congress would have a 120 day opportunity to veto these regulations if it disapproved.

Because of other unresolved differences between the Proxmire and Brock bills, the Committee decided to exclude the settlement charge legislation from the Omnibus 1974 Housing bill. In the meantime, the

settlement lobby began a vigorous campaign to overturn the Cranston compromise. During December of 1973 and January of 1974 the Housing Subcommittee of the House Banking Committee held hearings on settlement charge legislation. As indicated previously, 29 settlement industry witnesses testified and all 29 supported, H.R. 9989, the Stephens counterpart of the Brock bill.

During these House hearings, the seven consumer oriented witnesses who testified indicated support for an alternative approach to rate regulation. Under the alternative approach, mortgage lenders would be required to pay for all settlement charges required by the lender as a condition for making the loan. This approach assumes that: (i) lenders will initially increase their interest rates to cover the cost of settlement charges; (ii) over time, the superior economic bargaining power of lenders will force a reduction in excessive or unnecessary settlement charges; and (iii) competition between lenders will result in the savings being passed on to the general public.

The so-called "lender-pay" approach suggested by the House consumer witnesses was quite similar to a bill I introduced in the 92nd Congress, S. 2775, on October 29, 1971. However, at that time, consumer spokesmen were generally skeptical that any savings would be passed on to the general public. The recent House testimony thus represents a shift in consumer group opinion on the settlement charge issue. Accordingly, on March 26, 1974, I introduced S. 3232 which embodies the lender-pay approach advocated in the House testimony. On March 25, 1974, I wrote to the Chairman of the Senate Banking Committee requesting additional hearings on the settlement charge issue so that the Committee could explore both approaches in greater detail and obtain the benefit of the latest thinking of consumer spokesmen.

No response was received to my request for additional hearings on the settlement charge issue. However, on April 30, I and other Committee members were notified that the Committee would meet on May 2 to consider the latest version of the Brock bill, S. 3164 on which there had been no hearings. The short notice made it virtually impossible to alert consumer groups that the Brock bill was being considered.

During the Committee's meeting on May 2, I moved to strike Section 10(c) from the Brock bill which repealed HUD's regulatory authority to control settlement charges on FHA–VA transactions. This motion failed 9 to 3 on a roll call vote. I then offered as a substitute the exact text of the Cranston amendment which the Committee had already approved on December 14, 1973 by a vote of 9 to 6. This time the vote was 9 to 3 against the Cranston compromise with 3 members not voting. Only six members of the Committee were actually present when these votes were taken, or two less than a quorum. Of the nine votes against amending the Brock bill, five were cast by proxy. These votes made it clear that the supporters of the Brock bill had lined up enough proxies to ramrod their bill through Committee intact.

Dimensions of the Settlement Charge Rip-off

The most thorough and comprehensive study of settlement charges is contained in the HUD-VA report released on February 17, 1972. The data from the HUD-VA study was taken from over 50,000 FHA

and VA transactions during the month of March, 1971. The data was acquired from each FHA and VA insuring office located in all 50 states. The study found that the average total settlement charge was $1,937 on homes with an average sales price of $19,397. In other words, settlement charges accounted for ten percent of each residential transaction. The breakdown of the $1,937 settlement charge per transaction is indicated on Table I.

Table I.—Breakdown of Settlement Charges in HUD-VA Study (FHA-VA transactions during March, 1971)

[*Average charge per transaction based on 50,605 transactions*]

Item	
Closing charges	$494
Realtor sales commission	625
Points	454
Statutory charges	65
Prepaid items	299
Total settlement charges	1,937

The items of settlement charge referred to in Table I are defined as follows:

(*1*) *Closing charges.*—These charges include such items as title examination, title insurance, attorney fees, loan origination fees of up to 1% (charges in excess of 1% are included under "points") preparation of documents, credit reports, appraisal fees, surveys, closing fees, inspection fees and similar items.

(*2*) *Realtor sales commission.*—These are fees paid to a real estate agent as a sales commission, generally by the seller. The average fee of $625 per transaction indicated in the HUD-VA study is averaged over all 50,605 transactions included in the study. However, only 31,076 of the transactions reported the payment of a realtor commission, the balance being presumably sold by the owner or builder directly. Thus the average size of the realtor commission on those transactions where one was paid was $1,019.

(*3*) *Points.*—Points include loan discount payments to the lender in excess of the 1% loan origination fee included under closing charges. Points are typically charged when the FHA-VA ceilings rate is below the going market rate on conventional mortgage loans.

(*4*) *Statutory charges.*—These charges include recording fees and transfer taxes paid to state or local governments.

(*5*) *Prepaid items.*—These include prepayments of charges for real estate taxes, fire insurance, mortgage insurance, and interest accruing between the closing date and the date interest for the first mortgage payment is effective.

One of the main findings of the HUD-VA study is that there is an incredible variation in settlement charges between metropolitan areas and even within the same area. For example, for homes in the $20,000 to $24,000 price range, the HUD-VA study revealed the following variations:

Total settlement charges varied nationwide from a low of $200 to a high of $5,000;

Closing charges varied nationwide from a low of $50 to a high of nearly $2,000;

Total settlement charges in Los Angeles County varied from less than $1,000 to nearly $4,400.

Closing charges in Los Angeles County ranged from about $200 to almost $1,000;

Closing charges in Washington, D.C. ranged from $487 to $1,030;

Closing charges in Cook County, Illinois ranged from a low of $102 to a high of $723;

Similar variations were found in all of the areas that were studied in detail for the report.

The principal conclusions of the HUD–VA study were summarized in Secretary Romney's testimony before the Senate Banking Committee on March 1, 1972. These conclusions are quoted in part as follows:

"Settlement costs and practices vary widely within the same geographic area."

"Costs are unreasonably high in many areas, but not in all."

"State regulation of title insurance and other title related costs is largely ineffective."

"In most cases, competition in the conveyancing industry is directed toward other participants in the industry and not toward the homebuying public."

"It is evident from these findings that serious problems exist in the conveyancing industry, and that such problems demand immediate attention in order to assure that the public is not charged more for settlement costs than is reasonable."

In response to questioning about the size of the overcharge per year on closing costs, Secretary Romney said, "I don't think there is any question but what it is hundreds of millions of dollars."

Secretary Romney's conclusions were strongly supported by Assistant Secretary Gulledge. When asked whether there was any rational reason for the great disparity in closing costs, Mr. Gulledge made the following observation: "We found . . . within the same metropolitan area you have a great disparity between the costs being charged which would tend to give some credence to your point that there is not a great deal of rational relationship. *It is almost a question of what the traffic will bear.*" (emphasis supplied)

The Total Settlement Bill

From the figures developed in the HUD–VA study, it is possible to compute the total amount of settlement charges paid by homebuyers and sellers in an average year. When these figures are adjusted to include settlement charges on conventional mortgages and updated to reflect the increase in prices since 1971, the average total settlement charge on today's typical transaction comes to $2,816. There are approximately 5 million sales of one to two family homes in a normal year. At an average cost of $2,800, the total settlement charge bill paid by homebuyers and sellers comes to a staggering $14 billion a year. Table II indicates who gets what part of the annual $14 billion settlement bill.

TABLE II.—THE TOTAL SETTLEMENT BILL

Element of charge	Average charge per transaction (1974 prices)	Total annual charges based on 5,000,000 sales per year (billions)
Loan origination fee	$308	$1.5
Title insurance	202	1.0
Title examination	78	.4
Attorney fees	122	.6
Other closing charges	150	.8
Subtotal, closing charges	860	4.3
Real estate commission	1,121	5.6
Points	151	.7
Prepaid items	568	2.8
Statutory charges	116	.6
Total, settlement charge	2,816	14.0

The HUD–VA study also provided data on closing charges and settlement charges by State. These figures have been adjusted to include conventional mortgage transactions and up-dated for inflation. The results are listed in Table III. The average closing charge varied from a low of $476 in South Dakota to a high of $1,278 in New York, a variance of nearly three to one for essentially the same service. Total average settlement charges ranged from a low of $1,573 in South Dakota to $6,458 in Alaska, a variance of better than four to one.

TABLE III.—SETTLEMENT CHARGES BY STATE

State	Average closing charge (1974 prices)	Average settlement charge (1974 prices)	Estimated annual home sales (thousands)	Total annual closing charges (millions)	Total annual settlement charges (millions)
National average	$860	$2,816			
Alabama	795	1,949	94	$75	$183
Alaska	963	6,458	5	5	32
Arizona	892	2,653	42	37	111
Arkansas	727	2,412	58	42	140
California	1,125	3,518	478	538	1,682
Colorado	649	2,540	55	36	140
Connecticut	709	2,682	68	48	182
Delaware	1,110	3,415	13	14	44
District of Columbia	1,207	4,127	11	13	45
Florida	833	2,756	177	147	488
Georgia	930	2,669	114	106	304
Hawaii	1,056	3,794	15	16	57
Idaho	624	1,967	19	12	37
Illinois	708	2,669	246	174	657
Indiana	643	2,713	138	89	374
Iowa	638	2,999	80	51	240
Kansas	635	2,803	65	41	182
Kentucky	739	2,155	86	64	185
Louisiana	845	1,598	95	80	152
Maine	504	1,654	26	13	43
Maryland	1,127	4,431	88	99	390
Massachusetts	523	2,508	118	62	296
Michigan	654	2,666	230	150	613
Minnesota	655	3,242	94	61	305
Mississippi	835	1,836	60	50	110
Missouri	609	2,439	129	79	315
Montana	669	3,530	18	12	64
Nebraska	590	2,392	41	21	98
Nevada	906	2,716	11	10	30
New Hampshire	591	25,739	18	11	46
New Jersey	1,235	4,136	159	196	658
New Mexico	781	2,701	26	20	70
New York	1,278	3,898	324	414	1,234
North Carolina	880	2,569	135	119	347
North Dakota	492	1,967	16	8	31
Ohio	796	3,133	270	215	846
Oklahoma	706	1,855	79	56	147
Oregon	755	2,931	57	43	167
Pennsylvania	878	3,368	305	268	1,027
Rhode Island	662	2,566	21	14	54
South Carolina	863	2,514	68	59	171
South Dakota	476	1,573	18	9	28
Tennessee	823	2,540	107	88	272
Texas	638	2,448	308	196	754
Utah	798	2,137	25	20	53
Vermont	609	1,854	11	7	20
Virginia	1,164	3,408	113	131	385
Washington	873	3,351	92	80	308
West Virginia	802	2,501	50	40	125
Wisconsin	619	2,636	115	71	303
Wyoming	666	1,881	9	6	17
Total			5,000	4,216	14,562

How much fat is there in the $14 billion settlement bill? How much are consumers being overcharged? How much could be saved if charges were limited or the industry made competitive? I estimate at least $1.5 billion a year could be saved or roughly 10% of the total settlement bill. These potential savings are considerably in excess of the savings estimated from the no-fault insurance bill on which consumer organizations have centered much of their attention.

The largest element of the $14 billion settlement bill are real estate commissions. These total $5.6 billion a year. In today's market, the typical real estate agent's commission is 6% of the sales price and in some areas 7% compared to a more or less standard 5% just a few years ago. It is difficult to understand why the percentage commission paid to a real estate agent should be increasing since the average sales price of housing is also increasing faster than the rise in the

general cost of living. If real estate agent commissions were rolled back to the five percent level, consumers would save nearly $1 billion a year.

The second largest element of the $14 billion settlement bill are closing charges. These charges total $4.3 billion a year, with most of the money going to lenders, title insurance companies and attorneys. Title insurance companies alone receive a billion dollars a year in premiums. Less than three percent of this amount is paid out in losses.

A review of the State by State breakdown in Table III reveals that high closing charges are concentrated in six jurisdictions—New York, New Jersey, the District of Columbia, Virginia, Maryland, and California. These six jurisdictions account for 23% of all residential real estate transactions. As indicated on Table IV, the average closing charge in these six jurisdictions is $1,185 compared to $760 for the rest of the country. If closing charges in these six jurisdictions were to be reduced to the average for the rest of the county, the savings would be almost $500 million as indicated on Table V.

TABLE IV.—COMPARISON OF HIGH-CHARGE STATES WITH REST OF COUNTRY

	Average closing charge	Number of home sales per year (thousands)	Total annua closing charge (millions)
The 6 highest charge States	$1,185	1,173	$1,390
45 remaining States	760	3,827	2,910
Total United States	860	5,000	4,300

TABLE V.—ESTIMATED CLOSING COST OVERCHARGE BY STATE

State	Average closing charge	Amount in excess of $760 average for remaining States	Number of home sales per year (thousands)	Estimated annua overcharg (millionse
New York	$1,278	$518	324	$16
New Jersey	1,235	475	159	7
District of Columbia	1,207	447	11	5
Virginia	1,164	404	113	45
Maryland	1,127	367	88	32
California	1,125	365	478	174
Total overcharge				498

Why S. 3164 Won't Do the Job

The Committee report expresses the belief that the additional disclosures, the prohibition against kick-backs, and the limitation on escrow account payments contained in S. 3164 will, by themselves, eliminate excessive or unnecessary settlement charges. Aside from the assertions made by the settlement industry, there is no evidence to suggest that these reforms will be very effective in reducing excessive settlement charges.

One reason why settlement charges will not be appreciably reduced through disclosure is that the real estate settlement process is an inherently uncompetitive situation. The average person buys or sells a home only once or twice in his life time. He is a captive customer in the hands of the lender, the real estate agent or the attorney. He has

no basis for judging whether a particular fee or charge is reasonable, particularly when the amount of the fee or charge is small relative to the total purchase price of the house. Once a buyer is committed to a particular purchase, he is in no position to question individual charges which may be tacked on by various partial participants in the settlement process. It is unrealistic to assume that consumers will suddenly begin shopping for settlement services. A few sophisticated buyers might. However, the vast bulk of consumers will go along with whatever charges are imposed as they do today.

A second reason why disclosure is inadequate is that those who provide settlement services discourage price competition. Local and State bar associations have established minimum fee schedules for settlement attorneys. The 6% real estate commission has become virtually standard on residential transactions. Title insurance companies charge virtually the same premiums for title insurance. There is no reason to assume that these habits of non-competition, built up over a life time, will be transformed by a disclosure law.

The proponents of S. 3164 made much of the fact that minimum fee schedules for attorneys were declared to be in violation of the anti-trust laws in a 1972 decision. However, since the Committee ordered S. 3164 reported, this decision was overturned by the court of appeals on the grounds that the practice of law is a "learned profession" and not subject to the anti-trust laws.

The prohibition against kick-backs or other unearned fees contained in Section 7 of S. 3164 is a worthwhile reform. However, there is no evidence that closing charges are lower in the States which have already declared kickbacks to be illegal. Indeed, the Maryland State Bar prohibits kickbacks and yet closing charges in Maryland are among the highest in the nation.

In the absence of effective regulation, the net effect of the anti-kickback provision will be to transfer income from one segment of the settlement industry to another and possibly increase total settlement charges. For example, one of the most common type of kickback arrangements occures when title insurance companies rebate a portion of the title insurance premium to the attorney or lender or realtor who referred the business to them. Prohibiting kickbacks will result in a bananza to these title insurance companies since there is no method for forcing the savings to be passed on to the consumer. Nor is there any provision in the Brock bill to prevent the previous recipients of kickbacks from raising their charges to the public to compensate for the reduced kickback income. If this occurs, the net effect would be to increase the total settlement bill paid by the public. This may explain why title insurance companies have been the most enthusiastic supporters of the anti-kickback provision.

STRONGER ACTION NEEDED

Given the size, scope and nature of the settlement charge problem, it is evident that the weak remedies provided in the Brock bill are simply inadequate to do the job. Stronger measures are needed. The Committee has two bills before it which deal directly with the settlement charge problem, S. 2288 which I introduced on July 30, 1973 and S. 3232 which I introduced on March 25, 1974.

S. 2288 would require HUD to issue regulations limiting settlement charges on all mortgage transactions within six months. Some have

argued that the regulation of settlement charges is inherently unworkable, that too many separate services are involved, and that local differences in record-keeping practices are too great for HUD to develop fair and meaningful regulations. Others have expressed the fear that in the long run, regulations might raise settlement charges, should the settlement industry dominate the regulatory process as regulated industries so often do. Whatever the merits to these arguments, the fact remains that the Committee has not held in depth hearings to explore their validity. There have been examples of reasonably successful price regulation at the Federal level. For example, the Securities and Exchange Commission, under the authority of the Investment Company Act of 1940, has issued regulations limiting the maximum commission which can be charged in connection with the sale of mutual fund shares. While real estate settlement charges are more complicated, the problem does not seem incapable of administrative solution.

An alternative to the price regulation approach is contained in S. 3232. This bill would require mortgage lenders to pay for all settlement charges which they require as a condition for making the mortgage loan. For example, many lenders require borrowers to purchase a title insurance policy which protects the lender. If the policy is required by the lender for his protection, why shouldn't he pay for it? If lenders were required to pay for settlement charges, they would use their superior economic leverage and sophistication to force prices down. Assuming a reasonable degree of competition between lenders in the mortgage loan market, these savings would then be passed on to the general public. Another advantage of the lender-pay approach to the home-buyer is that the cost of settlement charges paid by the lender would be included in the finance charge which is tax deductible.

Why HUD's Regulatory Authority Should Not Be Repealed

It is a serious mistake to repeal HUD's regulatory authority to regulate settlement charges as is done under Section 10(c) of the Brock bill. First of all, it is premature to abandon the regulatory approach before Congress has thoroughly examined all the alternative methods for reducing excessive settlement charges. Congress has not held in depth hearings to examine under what circumstances and under what conditions regulations might or might not be feasible. All we have are the self-serving allegations of the settlement industry that regulations are inherently unfair and unworkable.

Second, until Congress does make a final judgment on the best way for limiting settlement charges, HUD's regulatory authority under Sec. 701(a) serves as a deterrent to prevent a further escalation in settlement charges. It also prods State and local governments into reforming real estate settlement practices. The repeal of HUD's regulatory authority will signal settlement attorneys, title insurance companies and others that the Federal government is no longer seriously interested in curbing excessive settlement charges. As a result, settlement charges are likely to rise to record highs, especially on FHA–VA transactions.

Third, even if we concede the argument that the disclosure and other provisions in the Brock bill might somehow lower settlement charges, the authority to regulate settlement charges should still be kept on the books to be used in the event the disclosure reforms do not work. In

theory, Congress could always pass a new law at a later date if it became convinced that the regulation of settlement charges was necessary. As a practical matter, it would be most difficult to enact such a bill in a timely manner given the depth of opposition to regulation on the part of the settlement lobby. Such legislation would be subjected to numerous delays at various points in the legislative process and these delays could cost home-buyers hundreds of millions of dollars.

It is not too difficult to understand why the settlement lobby is so anxious to repeal HUD's regulatory authority. Given the negative position taken by the present Secretary of HUD, the settlement lobby cannot be worried that tough regulations are imminent. However, the mere existence of the authority on the books does constitute a threat and probably constrains the providers of settlement services from raising their charges by as much as they would like to. The repeal of HUD's regulatory authority is thus likely to cost the consumer. Even a five-percent increase in settlement charges could cost consumers $700 million a year. These are some of the likely consequences if the Brock bill is enacted.

Why the Brock Bill Should Be Defeated

There is no controversy over the disclosure and other provisions in the Brock bill. However, if Section 10(c) repealing HUD's regulatory authority is retained, the Brock bill should be defeated. The increase in settlement charges which could be triggered by the repeal of HUD's authority would substantially outweigh any marginal benefits accruing to consumers from the disclosure and other provisions. As a practical matter, most of the so-called reforms in the Brock bill are already contained in other legislation or in administrative regulations either proposed or existing. For example, the Senate has already passed a bill, S. 2101, which calls for the comprehensive disclosure of settlement charges ten days in advance of settlement. HUD has announced its intention to implement administratively almost all of the reforms in the Brock bill. The limitations on payments into escrow accounts are already contained in the standard mortgage contracts promulgated by the Federal National Mortgage Association and the Federal Home Loan Bank Board. Thus, the so-called benefits of the Brock bill are marginal and largely cosmetic, while the potential cost to consumers arising from the repeal of HUD's regulatory authority is enormous. The Brock bill is not in the best interests of consumers and should be defeated.

Bill Proxmire.

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93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 93-1526

REAL ESTATE SETTLEMENT COSTS

DECEMBER 9, 1974.—Ordered to be printed

Mr. PATMAN, from the committee of conference, submitted the following

CONFERENCE REPORT

[To accompany S. 3164]

The committee of conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3164) to provide for greater disclosure of the nature and costs of real estate settlement services, to eliminate the payment of kickbacks and unearned fees in connection with settlement services provided in federally related mortgage transactions, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective Houses as follows:

That the Senate recede from its disagreement to the amendment of the House to the text of the bill and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the House amendment insert the following:

SHORT TITLE

SECTION 1. This Act may be cited as the "Real Estate Settlement Procedures Act of 1974".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country. The Congress also finds that it has been over two years since the Secretary of Housing and Urban Development and the Administrator of Veterans' Affairs submitted their joint report to the Congress on "Mortgage Settlement Costs" and that the time has come for the recommendations for Federal legislative action made in that report to be implemented.

(b) *It is the purpose of this Act to effect certain changes in the settlement process for residential real estate that will result—*

(1) in more effective advance disclosure to home buyers and sellers of settlement costs;

(2) in the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services;

(3) in a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance; and

(4) in significant reform and modernization of local record-keeping of land title information.

SEC. 3. For purposes of this Act—

(1) the term "federally related mortgage loan" includes any loan which—

(A) is secured by residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families; and

(B)(i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government; or

(ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(iii) is eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or from any financial institution from which it could be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) is made in whole or in part by any "creditor", as defined in section 103(f) of the Consumer Credit Protection Act (15 U.S.C. 1602(f)), who makes or invests in residential real estate loans aggregating more than $1,000,000 per year;

(2) the term "thing of value" includes any payment, advance, funds, loan, service, or other consideration;

(3) the term "settlement services" includes any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, and the handling of the processing, and closing or settlement;

(4) the term "title company" means any institution which is qualified to issue title insurance, directly or through its agents,

and also refers to any duly authorized agent of a title company;

(5) the term "person" includes individuals, corporations, associations, partnerships, and trusts; and

(6) the term "Secretary" means the Secretary of Housing and Urban Development.

UNIFORM SETTLEMENT STATEMENT

SEC. 4. The Secretary, in consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, shall develop and prescribe a standard form for the statement of settlement costs which shall be used (with such minimum variations as may be necessary to reflect unavoidable differences in legal and administrative requirements or practices in different areas of the country) as the standard real estate settlement form in all transactions in the United States which involve federally related mortgage loans. Such form shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement and shall indicate whether any title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both. Such form shall include all information and data required to be provided for such transactions under the Truth in Lending Act and the regulations issued thereunder by the Federal Reserve Board, and may be used in satisfaction of the disclosure requirements of that Act, and shall also include provision for execution of the waiver allowed by section 6(c).

SPECIAL INFORMATION BOOKLETS

SEC. 5. (a) The Secretary shall prepare and distribute booklets to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services. The Secretary shall distribute such booklets to all lenders which make federally related mortgage loans.

(b) Each booklet shall be in such form and detail as the Secretary shall prescribe and, in addition to such other information as the Secretary may provide, shall include in clear and concise language—

(1) a description and explanation of the nature and purpose of each cost incident to a real estate settlement;

(2) an explanation and sample of the standard real estate settlement form developed and prescribed under section 4;

(3) a description and explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate;

(4) an explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incident to a real estate settlement; and

(5) an explanation of the unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

Such booklets shall take into consideration differences in real estate settlement procedures which may exist among the several States and

territories of the United States and among separate political subdivisions within the same State and territory.

(c) Each lender referred to in subsection (a) shall provide the booklet described in such subsection to each person from whom it receives an application to borrow money to finance the purchase of residential real estate. Such booklet shall be provided at the time of receipt of such application.

(d) Booklets may be printed and distributed by lenders if their form and content are approved by the Secretary as meeting the requirements of subsection (b) of this section.

ADVANCE DISCLOSURE OF SETTLEMENT COSTS

SEC. 6. (a) Any lender agreeing to make a federally related mortgage loan shall provide or cause to be provided to the prospective borrower, to the prospective seller, and to any officer or agency of the Federal Government proposing to insure, guarantee, supplement, or assist such loan, at the time of the loan commitment, but in no case later than 12 calendar days prior to settlement, upon the standard real estate settlement form developed and prescribed under section 4, or upon a form developed and prescribed by the Secretary specifically for the purposes of this section, and in accordance with regulations prescribed by the Secretary, an itemized disclosure in writing of each charge arising in connection with such settlement. For the purposes of complying with this section, it shall be the duty of the lender agreeing to make the loan to obtain or cause to be obtained from persons who provide or will provide services in connection with such settlement the amount of each charge they intend to make. In the event the exact amount of any such charge is not available, a good faith estimate of such charge may be provided.

(b) If any lender fails to provide a prospective borrower or seller with the disclosure as required by subsection (a), it shall be liable to such borrower or seller, as the case may be, in an amount equal to—

(1) the actual damages involved or $500, whichever is greater, and

(2) in the case of any successful action to enforce the foregoing liability, the court costs of the action together with a reasonable attorney's fee as determined by the court;

except that a lender may not be held liable for a violation in any action brought under this subsection if it shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures adopted to avoid any such error.

(c) The provisions of subsection (a) shall be deemed to be satisfied with respect to a borrower or seller in connection with any settlement involving a federally related mortgage loan if the disclosure required by subsection (a) is provided at any time prior to settlement and the prospective borrower or seller, as the case may be, executes, under terms and conditions prescribed by regulations to be issued by the Secretary after consultation with the appropriate Federal agencies, a waiver of the requirement that the disclosure be provided at least 12 calendar days prior to such settlement. In issuing such regulations, the Secretary shall take into account the need to protect the borrower's and the seller's right to a timely disclosure.

(d) With respect to any particular transaction involving a federally related mortgage loan, no borrower shall maintain an action or separate actions against any lender under both the provisions of this section and the provisions of section 130 of the Consumer Credit Protection Act (15 U.S.C. 1640).

(e) The provisions of this Act shall supercede section 121(c) of the Consumer Credit Protection Act insofar as the latter applies to any federally related mortgage loan as defined in this Act.

DISCLOSURE OF PREVIOUS SELLING PRICE OF EXISTING REAL PROPERTY

SEC. 7. (a) No lender shall make any commitment for a federally related mortgage loan on a residence on which construction has been completed more than twelve months prior to the date of such commitment unless it has confirmed that the following information has been disclosed in writing by the seller or his agent to the buyer—

(1) the name and address of the present owner of the property being sold;

(2) the date the property was acquired by the present owner (the year only if the property was acquired more than two years previously); and

(3) if the seller has not owned the property for at least two years prior to the date of the loan application and has not used the property as a place of residence, the date and purchase price of the last arm's length transfer of the property, a list of any subsequent improvements made to the property (excluding maintenance repairs) and the cost of such improvements.

(b) The obligations imposed upon a lender by this section shall be deemed satisfied and a commitment for a federally related mortgage loan may thereafter be made if the lender receives a copy of the written statement provided by the seller to the buyer supplying the information required by subsection (a).

(c) Whoever knowingly and willfully provides false information under this section or otherwise willfully fails to comply with its requirements shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES

SEC. 8. (a) No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

(b) No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

(c) Nothing in this section shall be construed as prohibiting (1) the payment of a fee (A) to attorneys at law for services actually rendered or (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or (C) by a lender to its duly appointed agent for services actu-

ally performed in the making of a loan, or (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.

(d) (1) Any person or persons who violate the provisions of this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(2) In addition to the penalties provided by paragraph (1) o this subsection, any person or persons who violate the provisions of subsection (a) shall be jointly and severally liable to the person or persons whose business has been referred in an amount equal to three times the value or amount of the fee or thing of value, and any person or persons who violate the provisions of subsection (b) shall be jointly and severally liable to the person or persons charged for the settlement services involved in an amount equal to three times the amount of the portion, split, or percentage. In any successful action to enforce the liability under this paragraph, the court may award the court costs of the action together with a reasonable attorney's fee as determined by the court.

TITLE COMPANIES

SEC. 9. (a) No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company.

(b) Any seller who violates the provisions of subsection (a) shall be liable to the buyer in an amount equal to three times all charges made for such title insurance.

LIMITATION ON REQUIREMENT OF ADVANCE DEPOSITS IN ESCROW ACCOUNTS

SEC. 10. No lender, in connection with a federally related mortgage loan, shall require the borrower or prospective borrower—

(1) to deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes and insurance premiums with respect to the property, prior to or upon the date of settlement, an aggregate sum (for such purpose) in excess of—

(A) in any jurisdiction where such taxes and insurance premiums are postpaid, the total amount of such taxes and insurance premiums which will actually be due and payable on the date of settlement and the pro rata portion thereof which has accrued, or

(B) in any jurisdiction where such taxes and insurance premiums are prepaid, a pro rata portion of the estimated taxes and insurance premiums corresponding to the number of months from the last date of payment to the date of settlement,

plus one-twelfth of the estimated total amount of such taxes and insurance premiums which will become due and payable during the twelve-month period beginning on the date of settlement; or

(2) to deposit in any such escrow account in any month beginning after the date of settlement a sum (for the purpose of assuring payment of taxes and insurance premiums with respect to the property) in excess of one-twelfth of the total amount of the estimated taxes and insurance premiums which will become due and payable during the twelve-month period beginning on the first day of such month, except that in the event the lender determines there will be a deficiency on the due date he shall not be prohibited from requiring additional monthly deposits in such escrow account of pro rata portions of the deficiency corresponding to the number of months from the date of the lender's determination of such deficiency to the date upon which such taxes and insurance premiums become due and payable.

LIMITATIONS AND DISCLOSURES WITH RESPECT TO CERTAIN FEDERALLY RELATED MORTGAGE LOANS

SEC. 11. (a) The Federal Deposit Insurance Act is amended by adding at the end thereof the following new section:

"SEC. 25. (a) No insured bank, or mutual savings or cooperative bank which is not an insured bank, shall make any federally related mortgage loan to any agent, trustee, nominee, or other person acting in a fiduciary capacity without the prior condition that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the bank. At the request of the Corporation, the bank shall report to the Corporation on the identity of such person and the nature and amount of the loan, discount, or other extension of credit.

"(b) In addition to other available remedies, this section may be enforced with respect to mutual savings and cooperative banks which are not insured banks in accordance with section 8 of this Act, and for such purpose such mutual savings and cooperative banks shall be held and considered to be State nonmember insured banks and the appropriate Federal agency with respect to such mutual savings and cooperative banks shall be the Federal Deposit Insurance Corporation."

(b) Title IV of the National Housing Act is amended by adding at the end thereof the following new section:

"SEC. 413. No insured institution shall make any federally related mortgage loan to any agent, trustee, nominee, or other person acting in a fiduciary capacity without the prior condition that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the institution. At the request of the Federal Home Loan Bank Board, the insured institution shall report to the Board on the identity of such person and the nature and amount of the loan."

(c) The Federal Deposit Insurance Corporation or the Federal Home Loan Bank Board as appropriate may by regulation exempt classes or types of transactions from the provisions added by this section if the Corporation or the Board determines that the purposes of such provisions would not be advanced materially by their application to such transactions.

FEE FOR PREPARATION OF TRUTH-IN-LENDING AND UNIFORM SETTLEMENT STATEMENTS

SEC. 12. No fee shall be imposed or charge made upon any other person (as a part of settlement costs or otherwise) by a lender in con-

nection with a federally related mortgage loan made by it (or a loan for the purchase of a mobile home), for or on account of the preparation and submission by such lender of the statement or statements required (in connection with such loan) by sections 4 and 6 of this Act or by the Truth in Lending Act.

ESTABLISHMENT ON DEMONSTRATION BASIS OF LAND PARCEL RECORDATION SYSTEM

SEC. 13. The Secretary shall establish and place in operation on a demonstration basis, in representative political subdivisions (selected by him) in various areas of the United States, a model system or systems for the recordation of land title information in a manner and form calculated to facilitate and simplify land transfers and mortgage transactions and reduce the cost thereof, with a view to the possible development (utilizing the information and experience gained under this section) of a nationally uniform system of land parcel recordation.

REPORT OF THE SECRETARY ON NECESSITY FOR FURTHER CONGRESSIONAL ACTION

SEC. 14. (a) The Secretary, after consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, and after such study, investigation, and hearings (at which representatives of consumers groups shall be allowed to testify) as he deems appropriate, shall, not less than three years nor more than five years from the effective date of this Act, report to the Congress on whether, in view of the implementation of the provisions of this Act imposing certain requirements and prohibiting certain practices in connection with real estate settlements, there is any necessity for further legislation in this area.

(b) If the Secretary concludes that there is necessity for further legislation, he shall report to the Congress on the specific practices or problems that should be the subject of such legislation and the corrective measures that need to be taken. In addition, the Secretary shall include in his report—

(1) recommendations on the desirability of requiring lenders of federally related mortgage loans to bear the costs of particular real estate settlement services that would otherwise be paid for by borrowers;

(2) recommendations on whether Federal regulation of the charges for real estate settlement services in federally related mortgage transactions is necessary and desirable, and, if he concludes that such regulation is necessary and desirable, a description and analysis of the regulatory scheme he believes Congress should adopt; and

(3) recommendations on the ways in which the Federal Government can assist and encourage local governments to modernize their methods for the recordation of land title information, including the feasibility of providing financial assistance or incentives to local governments that seek to adopt one of the model systems developed by the Secretary in accordance with the provisions of section 13 of this Act.

DEMONSTRATION TO DETERMINE FEASIBILITY OF INCLUDING STATEMENTS OF SETTLEMENT COSTS IN SPECIAL INFORMATION BOOKLETS

SEC. 15. The Secretary shall, on a demonstration basis in selected housing market areas, have prepared and included in the special information booklets required to be furnished under section 5 of this Act, statements of the range of costs for specific settlement services in such areas. Not later than June 30, 1976, the Secretary shall transmit to the Congress a full report on the demonstration conducted under this section. Such report shall contain the Secretary's assessment of the feasibility of preparing and including settlement cost range statements for all housing market areas in the special information booklets for such areas, together with such other information and recommendations for additional legislation as he determines to be appropriate.

JURISDICTION OF COURTS

SEC. 16. Any action to recover damages pursuant to the provisions of section 6, 8, or 9 may be brought in the United States district court for the district in which the property involved is located, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

VALIDITY OF CONTRACTS AND LIENS

SEC. 17. Nothing in this Act shall affect the validity or enforceability of any sale or contract for the sale of real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a federally related mortgage loan.

RELATION TO STATE LAWS

SEC. 18. (a) This Act does not annul, alter, or affect, or exempt any person subject to the provisions of this Act from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this Act, and then only to the extent of the inconsistency. The Secretary is authorized to determine whether such inconsistencies exist. The Secretary may not determine that any State law is inconsistent with any provision of this Act if the Secretary determines that such law gives greater protection to the consumer. In making these determinations the Secretary shall consult with the appropriate Federal agencies.

(b) No provision of this Act or of the laws of any State imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Secretary, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

EFFECTIVE DATE

SEC. 19. The provisions of this Act, and the amendments made thereby, shall become effective one hundred and eighty days after the date of the enactment of this Act.

And the House agree to the same.

That the Senate recede from its disagreement to the amendment of the House to the title of the bill, and agree to the same.

WRIGHT PATMAN,
WM. BARRETT,
LEONOR K. SULLIVAN,
THOMAS L. ASHLEY,
WILLIAM S. MOORHEAD,
ROBERT G. STEPHENS, JR.
FERNAND ST GERMAIN,
HENRY GONZALEZ,
HENRY S. REUSS,
WILLIAM B. WIDNALL,
GARRY BROWN,
BEN B. BLACKBURN,
JOHN H. ROUSSELOT,
CHALMERS P. WYLIE,
ALBERT W. JOHNSON,
Managers on the Part of the House.

JOHN SPARKMAN,
WILLIAM PROXMIRE,
HARRISON A. WILLIAMS,
THOMAS J. MCINTYRE,
JOHN TOWER,
EDWARD W. BROOKE,
BILL BROCK,
Managers on the Part of the Senate.

JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendments of the House to the bill (S. 3164) to provide for greater disclosure of the nature and costs of real estate settlement services, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The House amendment to the text of the bill struck out all of the Senate bill after the enacting clause and inserted a substitute text.

The Senate recedes from its disagreement to the amendment of the House with an amendment which is a substitute for the Senate bill. The House amendment, the Senate bill and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

DEFINITIONS

The Senate bill contains a definition of "settlement services" which is generally broader than the House amendment's definition of the same term. The conference report contains the Senate provision with an amendment which substitutes the words "real estate agent or broker" for the word "realtor."

AUTHORITY OF HUD SECRETARY TO ESTABLISH SETTLEMENT COST STANDARDS FOR FHA AND VA MORTGAGES

The House amendment repealed section 701 of the Emergency Home Finance Act of 1970. The Senate bill contained no such provision and none is contained in the conference report.

The conferees recognize that section 701 authority is not currently being used. However, it is agreed that continuation of this stand-by authority is desirable for its deterrent effect and can, in fact, facilitate the achievement of the purposes of the Act. It should be understood, however, that nothing in the Act is intended to preclude the Secretary's use of Section 701 authority at any time he finds it necessary to curb abuses in specific market areas.

The Senate bill requires the Secretary of HUD to include in the report of the Secretary on necessity for further congressional action, the desirability of HUD providing borrowers and sellers of housing purchased or rehabilitated with the assistance of Federal related mortgage loans with all clerical and administrative services in connection with their settlement transaction. The House amendment contained no similar provision and none is contained in the conference report.

INFORMATION BOOKLETS

The Senate bill requires that the information booklets provided potential borrowers include, where practicable, the average amount of the settlement costs in the area where settlement is to take place. The House amendment contains no such provision. The conference report provides for a demonstration program in selected housing market areas to determine the feasibility of including statements of the range of costs for specific settlement services for all housing market areas. The HUD Secretary is to report to the Congress no later than June 30, 1976, on the demonstration conducted pursuant to this provision.

The Senate bill requires that the information booklet "reflect" the differences in settlement procedures around the country, while the House amendment requires that HUD "take into consideration" such differences in preparing the booklets. The conference report retains the House provision.

ADVANCED DISCLOSURE

Both the House amendment and the Senate bill require mortgage lenders involved in Federally-related residential mortgage transactions to provide advance disclosure of settlement costs to prospective buyers and to any officer or agency of the Federal Government proposing to insure, guarantee, supplement or assist such loan. In addition, the Senate bill requires disclosure of settlement costs to prospective sellers.

The House amendment requires disclosure to be made at the time of the loan commitment upon the standard settlement form prescribed by section 103 of the House amendment or upon a form developed and prescribed by the Secretary of HUD specifically for this purpose. The Senate bill requires disclosure to be made at least fifteen days prior to settlement on the standard settlement form prescribed by section 4 of the Senate bill. Both the House amendment and the Senate bill provide that the right to advance disclosure may be waived under terms and conditions prescribed by regulations to be issued by the Secretary of HUD after consultation with the Federal Reserve Board. The Senate bill directs the Secretary of HUD to take into account the need to protect the borrower's right to a timely disclosure.

The conference report contains the Senate provision to require advance disclosure of settlement costs to sellers as well as buyers, and also contains the House provision that disclosure may be made upon a form developed and prescribed by the Secretary of HUD for that purpose as well as on the standard settlement form.

The conference report contains the House provision with an amendment that the disclosure may be made at the time of the loan commitment, but in no case later than 12 calendar days prior to settlement, unless the right of waiver is exercised. The HUD Secretary shall take into account the need to protect the borrower's and seller's right to timely disclosure after consultation with appropriate federal agencies.

The conferees concluded that in some instances, as in the case of newly constructed housing, loan commitments are made as much as a year prior to settlement and that some settlement costs disclosed then could conceivably change before settlement is reached. It was, therefore, agreed that in such instances, disclosure need not necessarily be

made at the time of the loan commitment. Nevertheless, the conferees emphasize that the vast majority of residential mortgage transactions involve existing rather than newly constructed housing. Loan commitments for mortgage transactions involving existing housing are typically given sixty to ninety days prior to settlement. Since fees and commissions charged for settlement services usually remain fixed for substantial periods of time, the conferees agree that advance disclosure of settlement costs for most residential mortgage transactions shall be made at the time of the loan commitment or shortly thereafter. This view applies to newly constructed as well as existing housing. If loan commitments on newly constructed or existing housing are made more than sixty to ninety days prior to settlement, there would appear to be no obstacle, under normal circumstances, preventing disclosure sixty to ninetry days prior to settlement. For these reasons, the conferees anticipate that advance disclosure of settlement costs as late as twelve days prior to settlement would occur only in a small percentage of cases because of unanticipated problems or unusual mortgage transactions. In any event, the need for early disclosure of settlement costs to protect the interests of buyers and sellers should remain uppermost as a standard of procedure. In most cases, this should be at the time of the loan commitment.

The Senate bill requires the Secretary of HUD to consider the need to protect the borrower's right to a timely disclosure of settlement charges in issuing regulations covering the circumstances under which a waiver of this right can be executed. The House bill contains no similar provision. The conference report contains the Senate provision.

LEGAL PROCEEDINGS

The Senate bill permits the court at its discretion to award the costs of the action together with attorney's fees for civil liability recovery in suits to recover treble damages because of a proven violation of the anti-kickback provision. The House amendment contains no similar provision. The conference report contains the Senate provision with an amendment to add the word "court" before the word "cost" in the provision.

FINANCIAL HISTORY OF PROPERTY TRANSACTION

The House amendment requires certain information to be provided by the seller to the buyer concerning the financial history of the property to be purchased prior to a loan commitment being made. The Senate bill has no similar provision. The conference report contains the House provision with an amendment to delete paragraph (3) of subsection 108(a) of the House amendment relating to outstanding options in contracts; to insert after the words "mortgage loan" in that subsection 108(a) the words "on a residence on which construction has been completed more than 12 months prior to the date of such commitment"; and to add the words "knowingly and" before the word "willfully" where that word appears in subsection 111(c) of the House amendment.

The House amendment would forbid a seller to require directly or indirectly, as a condition to selling the property, that title insurance

covering the property be obtained from any particular title company. Violation of the section imposes on the seller the payment to the buyer of an amount equal to three times the charge for title insurance on the property. The Senate bill contains no similar provision. The conference report contains the House provision with an amendment which would substitute for the word "obtained" in subsection 111(a) of the House amendment the phrase "purchased by the buyer".

DISCLOSURE

The House amendment would require that the person actually receiving the beneficial interest of a federally related mortgage loan be revealed to the lender, and that the lender make information on the loan available to the appropriate federal regulatory agency. The federal agencies may make such information available to the public and may exempt certain classes of transactions from these requirements The Senate bill contains no similar provision. The conference report contains the House provision with an amendment deleting the authority of the federal agencies to make such information available to the public.

The House amendment contains a provision providing for the Federal Reserve Board to conduct a study by June 30, 1975, on the feasibility of lenders paying interest on escrow accounts and related questions. The Senate bill has no similar provision, and none is contained in the conference report.

LEGAL JURISDICTION

The House amendment provides that jurisdiction over cases arising under this Act to federal district courts where the property is located, or any other court of competent jurisdiction. The Senate bill limits jurisdiction to State courts of competent jurisdiction. The conference report contains the House provision.

STATE JURISDICTION

The House amendment permits States to enforce consumer protection requirements in connection with residential real estate transactions in addition to requirements of this Act. The Senate bill has no similar provision. The conference report contains the House provision with an amendment which would conform this provision to the recently enacted amendments to the Truth-in-Lending Act (Public Law 93-495) defining the relationship of that law to State laws, providing:

(a) This Act does not annul, alter, or affect, or exempt any person subject to the provisions of this Act from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this Act, and then only to the extent of the inconsistency. The Secretary is authorized to determine whether such inconsistencies exist. The Secretary may not determine that any State law is inconsistent with any provision of this Act if the Secretary determines that such law gives greater protection to the consumer. In making these determinations the Secretary shall consult with the appropriate federal agencies.

(b) No provision of this Act or of the laws of any State imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Secretary, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

WRIGHT PATMAN,
WM. BARRETT,
LEONOR K. SULLIVAN,
THOMAS L. ASHLEY,
WILLIAM S. MOORHEAD,
ROBERT G. STEPHENS, JR.,
FERNAND ST GERMAIN,
HENRY GONZALEZ,
HENRY S. REUSS,
WILLIAM B. WIDNALL,
GARRY BROWN,
BEN B. BLACKBURN,
JOHN H. ROUSSELOT,
CHALMERS P. WYLIE,
ALBERT W. JOHNSON,
Managers on the Part of the House.

JOHN SPARKMAN,
WILLIAM PROXMIRE,
HARRISON A. WILLIAMS,
THOMAS J. MCINTYRE,
JOHN TOWER,
EDWARD W. BROOKE,
BILL BROCK,
Managers on the Part of the Senate.

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93D CONGRESS } HOUSE OF REPRESENTATIVES { REPORT
2d Session } { No. 93-1177

REAL ESTATE SETTLEMENT PROCEDURES ACT OF 1974

JULY 9.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. PATMAN, from the Committee on Banking and Currency, submitted the following

REPORT

together with

SUPPLEMENTAL AND SEPARATE VIEWS

[To accompany H.R. 9989]

The Committee on Banking and Currency, to whom was referred the bill (H.R. 9989) to further the national housing goal of encouraging homeownership by regulating certain lending practices and closing and settlement procedures in federally related mortgage transactions to the end that unnecessary costs and difficulties of purchasing housing are minimized, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

The amendments are as follows:

On page 1, line 4, strike out "1973" and insert in lieu thereof "1974".

On page 2, line 3, after the word "property" insert "(including individual units of condominiums and cooperatives)".

On page 4, strike out line 3 and all that follows down through line 2, on page 5, and insert in lieu thereof the following:

REPORT OF THE SECRETARY ON NECESSITY FOR FURTHER CONGRESSIONAL ACTION

SEC. 102. (a) The Secretary, after consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, and after such study, investigation, and hearings (at which representatives of consumer groups shall be

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allowed to testify) as he deems appropriate, shall, not less than three years nor more than five years from the effective date of this Act, report to the Congress on whether, in view of the implementation of the provisions of this Act imposing certain requirements and prohibiting certain practices in connection with real estate settlements, there is any necessity for further legislation in this area.

(b) If the Secretary concludes that there is necessity for further legislation, he shall report to the Congress on the specific practices or problems that should be the subject of such legislation and the corrective measures that need to be taken. In addition, the Secretary shall include in his report—

(1) recommendations on the desirability of requiring lenders of federally related mortgage loans to bear the costs of particular real estate settlement services that would otherwise be paid for by borrowers;

(2) recommendations on whether Federal regulation of the charges for real estate settlement services in federally related mortgage transactions is necessary and desirable, and, if he concludes that such regulation is necessary and desirable, a description and analysis of the regulatory scheme he believes Congress should adopt; and

(3) recommendations on the ways in which the Federal Government can assist and encourage local governments to modernize their methods for the recordation of land title information, including the feasibility of providing financial assistance or incentives to local governments that seek to adopt one of the model systems developed by the Secretary in accordance with the provisions of Section 110 of this Act.

(c) Section 701 of the Emergency Home Finance Act of 1970 (12 U.S.C. 1710, note) is repealed.

On page 8, beginning in line 1, strike out "at least ten days prior to settlement" and insert in lieu thereof the following:
at the time of the loan commitment, or if there is no commitment, at a time to be prescribed by the Secretary after consultation with the Federal Reserve Board

On page 8, line 3, immediately after "103" insert ", or upon a form developed and prescribed by the Secretary specifically for the purposes of this section,".

On page 9, beginning in line 12, strike out "least ten days prior to such settlement" and insert in lieu thereof "the time specified in subsection (a) above".

On page 15, line 18, strike out "27" and insert in lieu thereof "24".

On page 16, line 16, strike out "415" and insert in lieu thereof "412".

On page 17, line 21, strike out "1974" and insert in lieu thereof "1975".

Introduction

Section 701 of the Emergency Home Finance Act of 1970 (P.L. 91–351) directed the Secretary of Housing and Urban Development and the Administrator of Veterans Affairs to prescribe standards

governing the amounts of settlement costs allowable in connection with financing of FHA-insured and VA-guaranteed mortgages. This provision also directed the HUD Secretary and VA Administrator to undertake a joint study in order to determine ways of standardizing and reducing the costs of real estate settlements.

This report was presented to the Congress in February 1972, and regulations concerning maximum amounts allowed to be charged on FHA–insured and VA-guaranteed mortgages were issued in June 1972, for six metropolitan areas of the country: Cleveland, Ohio; Newark, New Jersey; San Francisco-Oakland, California; Seattle-Everett, Washington; St. Louis, Missouri; and Washington, D.C. These prescribed maximum amounts have raised numerous complaints from around the country and the Secretary has withheld further implementation.

The Subcommittee on Housing has conducted hearings on the various bills introduced by the members dealing with the subject of settlement costs over the past two years. These hearings were conducted on February 22, and 24, 1972 receiving testimony from the Secretary of HUD, numerous industry groups, bar associations, and Members of Congress and private citizens. In its executive sessions on the 1972 Housing and Urban Development bill the Subcommittee approved a series of extensive provisions relating to real estate settlement costs. The full Committee held further public hearings on June 8, 9, 12, and 13, 1972 on the omnibus housing bill hearing considerable testimony on the Subcommittee settlement cost proposals. The full Committee adopted as title IX of the 1972 housing bill a series of proposals most of which are contained in the bill H.R. 9989. Title IX specifically included a provision repealing Section 701 of the 1970 Act.

The 1972 Housing and Urban Development bill failed to receive a rule in the House Rules Committee thereby killing any extensive legislation in that area.

The Subcommittee on Housing held further hearings on a number of new settlement cost reform proposals on December 4, 5, 1973, and again January 29, 30, 1974, on the present bill H.R. 9989 and the bill introduced by Mrs. Sullivan of Missouri, H.R. 12066. The Subcommittee on Housing decided not to include in its omnibus housing bill any settlement cost reform proposals and decided to act on settlement cost as a separate piece of legislation. The full Committee on June 25, 1974, marked up H.R. 9989 and ordered the bill reported as amended on a voice vote. During its consideration of various settlement cost reform proposals, the Committee has identified three major areas that must be dealt with if settlement costs are to be kept within reasonable limits:

(1) Abusive and unreasonable practices within the real estate settlement process that increase settlement costs to home buyers without providing any real benefits to them;

(2) The lack of understanding on the part of most home buyers about the settlement process and its costs, which lack of understanding makes it difficult for the demand-supply market for settlement services to function at maximum efficiency; and

(3) The basic complexities and inefficiencies in the present systems for the recording of land titles on the public records, which has been identified as the single most important barrier to significantly reducing the present level of settlement costs.

The Committee was presented with two basic approaches to be taken in solving questions regarding settlement costs. The first would be to regulate settlement costs directly. The second would be to regulate the underlying business relationships and procedures of which the costs are a function. H.R. 12066, the settlement cost reform bill introduced by Mrs. Sullivan adopts the first approach. The second approach is the approach which is contained in the bill adopted by the Committee.

This bill would proceed directly against the problem areas pointed out above in three basic ways: (1) prohibiting or regulating abusive practices, such as kickbacks, unearned fees, and unreasonable escrow accounts; (2) requiring that home buyers be provided both with greater information on the nature of the settlement process and with an itemized statement of all settlement charges well in advance of settlement; and (3) taking steps toward the simplification of the land recordation process, by establishing, on a demonstration basis in various areas of the United States, a model system or systems for the recordation of land parcels in a manner calculated to facilitate and simplify land transfers and mortgage transactions.

By dealing directly with such problems as kickbacks, unearned fees, and unreasonable escrow account requirements, the Committee believes that the bill will ensure that the costs to the American home buying public will not be unreasonably or unnecessarily inflated by abusive practices. By making information on the settlement process available to home buyers in advance of settlement and requiring advance disclosure of settlement charges, it is expected that many unnecessary or unreasonably high settlement charges will be reduced or eliminated. Home buyers who would otherwise shop around for settlement services, and thereby reduce their total settlement costs, are presently prevented from doing so because frequently they are not apprised of the costs of these services until the settlement date or are not aware of the nature of the settlement services that will be provided. The disclosure provisions of the bill should ameliorate such problems. By assisting in the establishment of simplified land recordation systems, the Committee hopes to reduce the time and effort presently devoted to the settlement process. A substantial portion of the fees presently charged for title examination and related services can be eliminated if the work that must be done under the present chaotic recording systems can be significantly reduced by the institution of modern recordation systems. In the long run, this aspect of the bill may be the single most important feature of the legislation from the standpoint of making significant reductions in the present level of settlement charges.

REPEAL OF SECTION 701 OF THE EMERGENCY HOME FINANCE ACT OF 1970

Section 102 (c) of H.R. 9989 would repeal section 701 of the Emergency Home Finance Act of 1970. This provision directed the Secretary of Housing and Urban Development and the Administrator of Veterans Affairs to prescribe standards governing the amounts of settlement costs allowable in connection with the financing of FHA and VA insured mortgages. This provision has been the subject of much dispute as to whether or not it authorizes HUD to regulate the rates and charges of settlement services in FHA–VA assisted mort-

gages. The Committee believes that any attempt to develop a system of rate regulation in this area would be unwise and unworkable.

After attempting to develop such a scheme, Assistant Secretary of HUD Sheldon Lubar testified that HUD's experience had demonstrated that "even if it could be concluded that Federal regulation of settlement costs was workable at all, such regulation could be achieved at only very high administrative cost, widely out of proportion to the benefits that would be received by consumers." He told the Subcommittee on Housing that he believed repeal of Section 701 was "vital" to any legislative package on settlement costs. This same view was expressed by the Chairman of the Federal Home Loan Bank Board Thomas R. Bomar who described Federal rate regulation of settlement costs as "merely symptomatic treatment" that was "likely to create a bureaucratic monstrosity" and lead to "serious distortions and instabilities in the marketplace."

Consumer witnesses who testified in recent hearings concluded that Federal rate regulation was not a desirable approach. For example, Alan Morrison, who represented Ralph Nader's Public Citizen Project, while he did not go so far as to urge repeal of Section 701, did tell the Subcommittee on Housing that "there is no evidence so far that indicates that mandatory price regulation by the Federal government is required."

Federal rate controls are warranted only if there are clear and convincing findings that settlement charges are unreasonably high on a widespread basis throughout the Nation and there is no other more practical way to deal with the problem. Neither of these findings has been made to date. The 1972 HUD–VA Report on Mortgage Settlement Costs found that "unreasonable costs probably occur in fewer areas than may be popularly assumed." Nor did the study specifically conclude that Federal rate regulation was the only means for dealing with the abuses uncovered.

REPORT OF THE SECRETARY ON NECESSITY FOR FURTHER CONGRESSIONAL ACTION

The Secretary of HUD, after consultation with the Administrator of Veterans Administration, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, would be directed to conduct a study and report back to the Congress not less than three years nor more than five years from the effective date of this act on the implementation and provisions of this bill. If the Secretary concludes that further legislation is necessary, he shall make such recommendations concerning specific practices or problems and corrective measures as may be necessary, including the desirability to have the lenders bear certain settlement costs. Such a report the Committee believes is a prerequisite if the Congress is to consider seriously such a far-reaching proposal. In 1972, a report on the proposals in real estate settlement processes proved to be the basis for the current settlement cost legislation the Committee has favorably approved. It is the Committee's belief that economic and statistical analysis of the lender pay proposal by HUD precede any future Congressional consideration of this matter. The Secretary would also be directed to make recommendations on further Federal regulations for the charges of real estate settlement services if necessary and desirable. If the Secretary concludes that such

legislation is necessary and desirable, he must provide to the Congress a description and analysis of the regulatory scheme he believes Congress should adopt. Finally, the Secretary is directed to make recommendations on the ways in which the Federal Government can assist local governments to modernize their methods for the recordation for land title information including the feasibility of providing financial assistance or incentives for local governments that seek to adopt one of the model systems developed by the Secretary in accordance with the other provisions of this bill.

UNIFORM SETTLEMENT STATEMENT

Section 103 would provide that a uniform settlement statement is to be prepared by the Secretary of HUD in consultation with various Federal agencies and is to be used as the standard settlement form for all transactions in the United States which involve Federally related mortgage loans. Because of the differences that exist in legal and administrative requirements and practices in various areas of the country, the uniform settlement statement may contain minimum variations that are necessary to reflect these differences across the country. The form is also intended to include all of the information and data required to be provided under the Truth-in-Lending Act and the regulations thereunder, so that by combining the settlement statement with the Truth-in-Lending form, more effective disclosure can be made to the home buyer.

SPECIAL INFORMATION BOOKLETS

Section 104 would direct that the Secretary of HUD prepare and distribute special information booklets to help persons borrowing money to finance the purchase of a home to understand better the nature and costs of real estate settlement services. These booklets, which may be prepared by lenders if their form and content are approved by the Secretary, are to be distributed to the homebuyer at the time he files a mortgage loan application.

ADVANCED DISCLOSURE OF SETTLEMENT COSTS

Section 105 would require that any lender agreeing to make a Federally related mortgage loan must provide to the homebuyer and the seller an itemized disclosure of each charge arising in connection with the settlement at the time of the loan commitment or, where there is no commitment, at a time to be prescribed by the Secretary after consultation with the Federal Reserve Board. This disclosure would be made upon the uniform settlement statement to be developed under section 103 of the bill or upon a form developed and described by the Secretary. Where it is not possible to provide the exact amount of a particular charge, the lender shall provide the prospective buyer with a good faith estimate of the charge. This section provides that failure on the part of the lender to disclose the amount of each charge to prospective borrowers, or to make a good faith estimate of such charge if the exact amount is not available, shall result in the lender being liable to the borrower for actual damages or $500.00, whichever is higher, plus court costs and reasonable attorney's fees.

The requirement of this disclosure of settlement charges may be waived under certain conditions to be prescribed by the Secretary or the Federal Reserve Board. The Committee feels these regulatory conditions should be drafted carefully so that the waiver provision cannot be used by lenders and other parties to the transaction to undermine the essential purpose of this disclosure, which is to give the homebuyer in all cases, except in a genuine personal emergency, adequate time to determine whether the charges to be made at closing are proper, fair, and reasonable. The Committee believes that this disclosure made at the time of the loan commitment is more reasonable and would be of greater value to homebuyers.

Prohibition Against Kickbacks and Unearned Fees

Section 106 is intended to prohibit all kickback or referral fee arrangements whereby any payment is made or "thing of value" furnished for the referral of real estate settlement business. The section also prohibits a person or company that renders a settlement service from giving or rebating any portion of the charge to any other person except in return for services actually performed. Reasonable payments in return for services actually performed or goods actually furnished are not intended to be prohibited.

In a number of areas of the country, competitive forces in the conveyancing industry have led to the payment of referral fees, kickbacks, rebates and unearned commissions as inducements to those persons who are in a position to refer settlement business. Such payments may take various forms. For example, a title insurance company may give 10% or more of the title insurance premium to an attorney who may perform no services for the title insurance company other than placing a telephone call to the company or filling out a simple application. A discount or allowance for the prompt payment of a title insurance premium or other charge for a settlement service may be given to realtors or lenders as a rebate for the placement of the business with the individual or company giving the discount. An attorney may give a portion of his fee to another attorney, lender or realtor who simply refers a prospective client to him. In some instances, a "commission" may be paid by a title insurance company to a corporation that is wholly-owned by one or more savings and loan associations, even though that corporation performs no substantial services on behalf of the title insurance company.

In all of these instances, the payment or thing of value furnished by the person to whom the settlement business is referred tends to increase the cost of settlement services without providing any benefits to the home buyer. While the making of such payments may heretofore have been necessary from a competitive standpoint in order to obtain or retain business, and in some areas may even be permitted by state law, it is the intention of section[106] to prohibit such payments, kickbacks, rebates, or unearned commissions.

Subsection (c) makes clear that section 106 is not intended to prohibit the payment by title insurance companies, attorneys, lenders and others for goods furnished or services actually rendered, so long as the payment bears a reasonable relationship to the value of the goods or services received by the person or company making the payment. To

the extent the payment is in excess of the reasonable value of the goods provided or services performed, the excess may be considered a kickback or referral fee proscribed by section 106. Those persons and companies that provide settlement services should therefore take measures to ensure that any payments they make or commissions they give are not out of line with the reasonable value of the services received. The value of the referral itself (i.e., the additional business obtained thereby) is not to be taken into account in determining whether the payment is reasonable.

Subsection (c) specifically sets forth the types of legitimate payments that would not be proscribed by the section. For example, commissions paid by a title insurance company to a duly appointed agent for services actually performed in the issuance of a policy of title insurance would not be proscribed. Such agents, who in many areas of the country may also be attorneys, typically perform substantial services for and on behalf of a title insurance company. These services may include a title search, an evaluation of the title search to determine the insurability of the title (title examination), the actual issuance of the policy on behalf of the title insurance company, and the maintenance of records relating to the policy and policy-holder. In essence, the agent does all of the work that a branch office of the title insurance company would otherwise have to perform. Similarly, the payment of a bona fide salary or other compensation for goods or facilities actually furnished or services actually performed would not be prohibited by section 106.

Subsection (d) imposes both criminal and civil penalties on any person or persons who violate the provisions of the section. The criminal penalty may be a fine of up to $10,000 or imprisonment for up to one year or both. In addition, any person or persons who violate the provisions of the section shall be liable to the person whose business has been referred for three times the amount of the proscribed payment, kickback or referral fee.

Limitation on Requirement of Advance Deposits in Escrow Accounts

Section 107 is designed to limit the amounts that lenders can require home buyers to pay into escrow accounts established to ensure the payment of real estate taxes and insurance. At the present time, many lenders require that a home buyer establish such an account at the time of settlement and pay as much as 6 months, one year or even two years advance taxes and insurance premiums into this account. Section 107 would limit the amount of these payments at the time of settlement in the following manner: (1) in jurisdictions where taxes and insurance premiums are post-paid, the borrower could not be required to deposit more than the amount of taxes and insurance premiums that will be due and payable on the date of settlement plus the pro rata portion of such taxes and premiums that has already accrued, and (2) in jurisdictions where taxes and insurance premiums are pre-paid, the borrower could not be asked to deposit more than the pro rata portion of the estimated taxes and insurance premiums based on the number of months from the last payment date to the date of settlement. In both cases, lenders may also require one-twelfth of the taxes and insurance premiums estimated to become due and payable during the twelve months following the date of settlement.

After the date of settlement, a lender may only require the borrower to deposit in any one month one-twelfth of the total taxes and insurance premiums that will be due and payable during the year. In those areas where excessive escrow requirements have been imposed on home buyers, this provision will result in substantial savings to the home buyer at the time of settlement without substantially interfering with the legitimate requirements of lenders for some assurance that real estate taxes and insurance premiums will continue to be paid on the property.

During its numerous hearings on the question of settlement cost practices, the Committee became very concerned over the practices of a number of communities in imposing very high transfer taxes and long-term prepayment on real estate taxes at the time of settlement. The Committee hopes that in those jurisdictions where such practices continue that the Secretary of HUD will encourage them to change such practices and rely on sources of revenue other than this penalty to the home purchaser at the time of settlement.

DISCLOSURE OF PREVIOUS SELLING PRICE OF EXISTING REAL PROPERTY

Section 108 is intended to prevent abuses that have arisen in connection with the activities of real estate speculators, in connection with the role of existing residential real properties. A lender would be prohibited from making a commitment for any loan unless the seller of the property provides the buyer with (1) the name and address of the present owner, (2) the date the property was acquired by the present owner (the year only if the property was acquired only two years previously), (3) options or contracts to sell that may be outstanding, (4) the date of the last arms length transfer on property and improvements if not presently owned for two years, excluding maintenance repairs. Failure to comply with this section would carry a fine of not more than $10,000 or imprisonment of not more than one year or both.

FEE FOR PREPARATION OF TRUTH-IN-LENDING AND UNIFORM SETTLEMENT STATEMENTS

Section 109 would prohibit lenders from imposing on borrowers any fee or charge for the preparation of the Truth-in-Lending statement or any other disclosure statement called for by the provisions of the bill.

ESTABLISHMENT OF DEMONSTRATION BASIS OF LAND PARCEL RECORDING SYSTEM

Section 110 would direct the Secretary to establish and place in operation on a demonstration basis a model system or systems for the recordation of land parcels in order to facilitate and simplify land transfers and mortgage transactions and to reduce their costs. The ultimate objective of this demonstration program is to develop a standard land parcel recording system for eventual use on a uniform nationwide basis.

TITLE COMPANIES

Section 111 would prohibit a seller of property, as a condition of sale, from stipulating that title insurance be obtained from a particular title company and would provide a penalty for violation equal to three times all charges for title insurance.

LIMITATIONS AND DISCLOSURES WITH RESPECT TO CERTAIN FEDERALLY RELATED LOANS

Section 112 is intended to provide for the disclosure of straw parties in order to identify true ownership of a residential structure. The practice of using straw parties has been used in many real estate speculation schemes that this committee has investigated over the past 5 years.

This section amends the Federal Deposit Insurance Act and Title IV of the National Housing Act to require that a lender may not make a federally-related mortgage loan to any agent, trustee, nominee or other person acting in a fiduciary capacity unless the identity of the party or parties receiving the beneficial interest in the loan is revealed to the lender. This information may be made available to the FDIC or Federal Home Loan Bank Board and these agencies may make such information available to the public. Under this provision, the Secretary may by regulation exempt certain classes or types of transactions from the provisions of the section if he determines that the purposes of the section would not be advanced materially by the application of this section to these types of transactions.

STUDY CONCERNING THE PAYMENT OF INTEREST ON CERTAIN ESCROW ACCOUNTS

Section 113 directs the Board of Governors of the Federal Reserve System to conduct a study of escrow accounts maintained by lenders in connection with mortgage loans in order to determine the feasibility of requiring lenders to pay interest to the beneficial owners of these accounts.

The Committee believes that this study is particularly timely since a number of States have recently passed legislation providing for the payment of interest on escrow accounts maintained by lenders in connection with mortgage loans. A number of large mortgage lending institutions around the country recently began paying interest on such escrow accounts. The Committee believes that the study to be conducted by the Federal Reserve should make use of the experience demonstrated by these financial institutions and those States which permit payment of such interest on escrow accounts.

COST OF CARRYING OUT THE BILL AND COMMITTEE VOTE

In compliance with clause 7, rule VIII of the Rules of the House of Representatives, no authorization is needed in order to carry out the provisions of the bill.

In compliance with clause 27, rule VI of the Rules of the House of Representatives, the following statement is made relative to the record vote on the motion to report the bill: a voice vote was cast for reporting of the bill favorably.

SECTION-BY-SECTION EXPLANATION OF THE COMMITTEE BILL

SECTION 101. DEFINITIONS

Section 101 defines terms used in the reported bill. (1) "Federally-related mortgage loan" would include any loan secured by 1-to-4-family residential real property. including individual units of condo-

miniums and cooperatives, which is (A) made by any lender who is regulated by an agency of the Federal Government or whose deposits or accounts are insured by an agency of the Federal Government, (B) made, insured, or assisted by any officer or agency of the Federal Government or under or in connection with a housing or urban development or related program administered by any such officer or agency, (C) eligible for purchase by FNMA, GNMA, or the Federal Home Loan Mortgage Corporation, or by any insitution from which it could be purchased by the Federal Home Loan Mortgage Corporation, or (D) made by any "creditor" who makes, or invests in, residential real estate loans aggregating more than $1 million annually. (2) "Thing of value" would include any payment, advance, funds, loan, service, or other consideration. (3) "Title company" would mean any institution which is qualified to issue title insurance and any authorized agent of such company. (4) "Person" would include individuals, corporations, associations, partnerships, and trusts. (5) "Settlement services" would include the following when provided in connection with a real estate settlement: title searches, title examination, the provision of tile certificates, title insurance, services rendered by an attorney, property surveys, credit reports, pest and fungus inspections, and the handling of the closing or settlement itself. (6) "Secretary" would mean the Secretary of Housing and Urban Development.

SECTION 102. REPORT OF THE SECRETARY ON NECESSITY FOR FURTHER CONGRESSIONAL ACTION

Subsection (a) of section 102 of the reported bill would direct the Secretary, after consultation with the Veterans' Administrator, the FDIC, and the Federal Home Loan Bank Board, and after appropriate study, investigation, and hearings, to report to the Congress between three years and five years after the effective date of the bill the necessity for further legislation.

Subsection (b) of section 102 of the reported bill would direct the Secretary, if he concludes further legislation is needed with respect to real estate settlements, to report his recommendations to Congress. This subsection would also direct the Secretary to include in his report recommendations on (1) the desirability of requiring lenders of federally-related mortgage loans to pay for certain real estate settlement services that would otherwise be paid for by borrowers, (2) the necessity and desirability of Federal regulation of the charges for real estate settlement services in federally-related mortgage transactions, and, if he concludes that such regulation is advisable, a descriptive analysis of the regulatory scheme he believes Congress should adopt, and (3) ways the Federal Government can assist and encourage local governments (including the feasibility of providing financial assistance or incentives for adoption of a model system developed by the Secretary) to modernize their recordation methods of land title information.

Subsection (c) of section 102 would repeal section 701 of the Emergency Home Finance Act of 1970, the present provision relating to the regulation of settlement costs in connection with FHA and VA loans.

SECTION 103. UNIFORM SETTLEMENT STATEMENT

Section 103 of the reported bill would require the Secretary, after appropriate consultation, to develop a single standardized form for the statement of settlement costs which would be used (with such minor variations as are necessary to reflect regional requirements or practices) in all transactions involving federally related mortgage loans. Charges imposed on both borrower and seller would be required to be clearly and conspicuously itemized. The form would indicate whether the title insurance premium included in the charges would insure the lender's or borrower's interest in the real property, or both. The form would include all information required by the Truth-in-Lending Act and would also include provision for execution of a waiver allowed by section 105(c) of the reported bill. Such form could be used to satisfy the disclosure requirements of the Truth-in-Lending Act.

SECTION 104. SPECIAL INFORMATION BOOKLETS

Subsection (a) of section 104 of the reported bill would direct the Secretary to prepare and distribute booklets to lenders to assist prospective borrowers in understanding the nature and cost of real estate settlement services.

Subsection (b) of section 104 of the reported bill would require that the booklets include an explanation of the nature of costs incident to real estate settlements, a sample of the standard settlement form, an explanation of the nature of escrow accounts, an explanation of the manner of selecting persons to provide necessary services, and an explanation of unfair practices and charges to be avoided. These booklets should take into account differences in real estate settlement procedures.

Subsection (c) of section 104 of the reported bill would require lenders to provide this booklet to a prospective borrower at the time of receipt of a loan application.

Subsection (d) of section 104 of the reported bill would permit lenders to print and distribute these booklets upon approval by the Secretary.

SECTION 105. ADVANCE DISCLOSURE OF SETTLEMENT COSTS

Subsection (a) of section 105 of the reported bill would require lenders making federally-related mortgage loans to provide borrowers and appropriate officers or agencies of the Federal Government at the time of the loan commitment or absent a commitment, at a time prescribed by the Secretary after appropriate consultation, an itemized disclosure of all charges on the standard real estate settlement form or upon a form developed by the Secretary for purposes of this section.

Subsection (b) of section 105 of the reported bill would impose a sanction on lenders failing to comply with this requirement in an amount equal to the greater of the actual damages or $500, plus court costs and an attorney's fee in a successful action. A sanction would not be imposed if the violation was unintentional and resulted from bona fide error.

Subsection (c) of section 105 of the reported bill would provide that the advance disclosure requirement is satisfied if the lender makes the

disclosure at any time prior to settlement and the borrower waives the notice requirement.

Subsection (d) of section 105 of the reported bill would prohibit a borrower from maintaining an action against any lender under both this section and section 130 of the Consumer Credit Protection Act.

SECTION 106. PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES

Subsection (a) of section 106 of the reported bill would prohibit the giving or accepting by any person of any remuneration pursuant to any agreement that business incident to a real estate settlement involving a federally-related mortgage would be referred to any person.

Subsection (b) of section 106 of the reported bill would prohibit the giving or accepting of any portion of any charge made or received for performing a real estate settlement service in connection with a transaction involving a federally-related mortgage loan other than for services rendered.

Subsection (c) of section 106 of the reported bill would provide that nothing in this section would prohibit (1) the payment of a fee for services rendered (A) to an attorney, (B) by a title company to its agent, or (C) by a lender to its agent, or (2) the payment to any person of a salary or other payments for goods furnished or services performed.

Subsection (d) of section 106 of the reported bill would impose a fine of not more than $10,000 or imprisonment for not more than 1 year, or both for any violation of this section. In addition, any person violating the provisions of subsection (a) would be liable to the person whose business had been referred in an amount equal to three times the value or amount of the fee or thing of value referred; and any person violating the provisions of subsection (b) would be liable to the person charged for the settlement services in an amount equal to three times the amount of the portion or percentage received.

SECTION 107. LIMITATION ON RETIREMENT OF ADVANCE DEPOSITS IN ESCROW ACCOUNTS

Section 107 of the reported bill would prohibit any lender from requiring any borrower (1) to deposit in an escrow account before or on the date of settlement a sum to insure payment of property taxes and insurance premiums in excess of (A) in any jurisdiction where the taxes and premiums are postpaid, the total amount of taxes and premiums due and payable on the date of settlement plus the pro rata portion which has accrued, or (B) in any jurisdiction where the taxes and insurance premiums are prepaid, a pro rata portion of the estimated taxes and premiums, and (C) one-twelfth of the estimated total amount of the taxes and insurance premiums which will become due and payable during the twelve-month period beginning on the date of settlement, or (2) to deposit in any escrow account after settlement a sum to insure payment of property taxes and insurance premiums in excess of one-twelfth of the estimated taxes and premiums due and payable during the twelve-month period beginning on the first day of the month of settlement, except, if the lender determines there will be a deficiency, he may require additional pro rata monthly deposits in the escrow account to alleviate the anticipated deficiency.

SECTION 108. DISCLOSURE OF PREVIOUS SELLING PRICE OF EXISTING REAL PROPERTY

Subsection (a) of section 108 of the reported bill would prohibit any lender from making a loan commitment unless the seller or his agent discloses in writing to the buyer the identity of the present owner of the real property to be purchased; the date he acquired the property; the existence of any options or contracts to sell the property; and if the seller acquired the property within two years of the loan application and has not used it as a place of residence, the price for and date of the last transfer of the property (including improvements made and their cost).

Subsection (b) of section 108 of the reported bill would allow a commitment to be made by a lender if he receives a written statement from the seller to the buyer supplying the information required by section 108(a).

Subsection (c) of section 108 of the reported bill would impose a fine of not more than $10,000 or imprisonment for not more than one year, or both, for willful violation of this section.

SECTION 109. FEE FOR PREPARATION OF TRUTH-IN-LENDING AND UNIFORM SETTLEMENT STATEMENTS

Section 109 of the reported bill would prohibit the imposition of fees or charges by lenders for the preparation of statements required by sections 103 and 105 of the reported bill or by the Truth-in-Lending Act.

SECTION 110. ESTABLISHMENT OF DEMONSTRATION BASIS OF LAND PARCEL RECORDATION SYSTEM

Section 110 of the reported bill would direct the Secretary to establish on a demonstration basis in various areas of the United States model systems for the recordation of land parcels to facilitate real estate transfers and mortgage transactions and to reduce costs.

SECTION 111. TITLE COMPANIES

Subsection (a) of section 111 of the reported bill would prohibit the seller in a federally-related mortgage transaction to require as a condition of sale that title insurance be obtained from any specific title company.

Subsection (b) of section 111 of the reported bill would make any seller violating subsection (a) liable to the buyer for treble the amount of all charges made for such title insurance.

SECTION 112. LIMITATIONS AND DISCLOSURES WITH RESPECT TO CERTAIN FEDERALLY-RELATED MORTGAGE LOANS

Subsection (a) of section 112 of the reported bill would amend the Federal Deposit Insurance Act by adding a new section 24. Section 24(a) would require that as a condition to making federally-related mortgage loans insured banks and mutual savings and cooperative banks must know the identity of the person receiving the beneficial

interest of the loan. That information would be reported upon request to the FDIC and may be made available to the public. Section 24(b), in addition to other available remedies, would provide that for purposes of enforcement, mutual savings and cooperative banks be considered to be State nonmember insured banks under section 8 of the FDIC Act and that FDIC be the appropriate Federal agency under such section.

Subsection (b) of section 112 of the reported bill would amend title IV of the National Housing Act by adding a new section 412 imposing a requirement with respect to insured institutions identical to the requirement imposed under the amendment to be made by subsection (a).

Subsection (c) of section 112 of the reported bill would permit the FDIC or the Federal Home Loan Bank Board, as appropriate, to exempt classes or types of transactions from these amendments if the purposes of the section would not be materially advanced by their application.

SECTION 113. STUDY CONCERNING PAYMENT OF INTEREST ON CERTAIN ESCROW ACCOUNTS

Subsection (a) of section 113 of the reported bill would direct the Board of Governors of the Federal Reserve System to conduct a study of escrow accounts maintained by lenders in connection with mortgage loans which require borrowers to make periodic prepayment of certain items in order to determine the feasibility of requiring payment of interest on such accounts by lenders. Results of such study would be transmitted to the Congress by June 30, 1975.

Subsection (b) of section 113 of the reported bill would require the report required by subsection (a) to include the cost to lenders of maintaining escrow accounts, the profit or loss they sustain, a comparison of this cost with costs of similar account services, an estimate of the amount of money maintained in escrow accounts, an estimate of the effect of failure to establish escrow accounts on foreclosure rates, the value of these escrows to tax collection agencies, and the extent to which borrowers are charged for searches of tax records.

SECTION 114. JURISDICTION OF COURTS

Section 114 of the reported bill would provide that any action to recover damages pursuant to section 105, 106, or 111 (relating to advance disclosure of settlement costs, prohibition against kickbacks and unearned fees, and title companies, respectively) may be brought in the U.S. district court for the district where the property is located, of in any other court of competent jurisdiction, within one year from the violation.

SECTION 115. VALIDITY OF CONTRACTS AND LIENS

Section 115 of the reported bill would provide that nothing in the Act would affect the validity or enforceability of any sale or contract for the sale of real property transaction or any loan, loan agreement, mortgage, or lien arising in connection with a federally-related mortgage loan.

SECTION 116. EFFECTIVE DATE

Section 116 of the reported bill would provide that the bill is to become effective 180 days after the date of its enactment.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics:

SECTION 701 OF THE EMERGENCY HOME FINANCE ACT OF 1970

[SETTLEMENT COSTS IN THE FINANCING OF FEDERAL HOUSING ADMINISTRATION AND VETERANS' ADMINISTRATION ASSISTED HOUSING

[SEC. 701. (a) With respect to housing built, rehabilitated, or sold with assistance provided under the National Housing Act or under chapter 37 of title 38, United States Code, the Secretary of Housing and Urban Development and the Administrator of Veterans' Affairs are respectively authorized and directed to prescribe standards governing the amounts of settlement costs allowable in connection with the financing of such housing in any such area. Such standards shall—

[(1) be established after consultation between the Secretary and the Administrator;

[(2) be consistent in any area for housing assisted under the National Housing Act and housing assisted under chapter 37 of title 38, United States Code; and

[(3) be based on the Secretary's and the Administrator's estimates of the reasonable charge for necessary services involved in settlements for particular classes of mortgages and loans.

[(b) The Secretary and the Administrator shall undertake a joint study and make recommendations to the Congress not later than one year after the date of enactment of this Act with respect to legislative and administrative actions which should be taken to reduce mortgage settlement costs and to standardize these costs for all geographic areas.]

FEDERAL DEPOSIT INSURANCE ACT

* * * * * * *

SEC. 24. (a) No insured bank, or mutual savings or cooperative bank which is not an insured bank, shall make any federally related mortgage loan to any agent, trustee, nominee, or other person acting in a fiduciary capacity without the prior condition that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the bank. At the request of the Corporation, the bank shall report to the Corporation on the identity of such person and the nature and amount of the loan, discount, or other extension of credit; and the Corporation may make available to the public the information contained in any such report.

(b) In addition to other available remedies, this section may be enforced with respect to mutual savings and cooperative banks which are not insured banks in accordance with section 8 of this Act, and for such purpose such

mutual savings and cooperative banks shall be held and considered to be State nonmember insured banks and the appropriate Federal agency with respect to such mutual savings and cooperative banks shall be the Federal Deposit Insurance Corporation.

TITLE IV OF THE NATIONAL HOUSING ACT

* * * * * * *

SEC. 412. No insured institution shall make any federally related mortgage loan to any agent, trustee, nominee, or other person acting in a fiduciary capacity without the prior condition that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the institution. At the request of the Federal Home Loan Bank Board, the insured institution shall report to the Board on the identity of such person and the nature and amount of the loan; and the Board may make available to the public the information contained in any such report.

SUPPLEMENTAL VIEWS OF CONGRESSMEN PATMAN, BARRETT, SULLIVAN, ASHLEY, KOCH, MITCHELL, FAUNTROY, AND STARK

We, the undersigned eight members of the Banking and Currency Committee, believe that H.R. 9989, the Real Estate Settlement Procedures Act of 1974, in its present form is essentially an anti-consumer, anti-residential real estate reform bill because it would erase the only Federal authority in existence to regulate settlement costs.

At the very minimum, public interest and conscience dictate that Members of the House amend the bill to preserve Federal authority to regulate settlement costs. In doing so, the potential of ultimately saving FHA and VA residential borrowers as much as $100 million a year would be preserved.

The effect of H.R. 9989, as it was reported by the Banking and Currency Committee, is to shield the very people responsible for widespread, abusive and fraudulent real estate settlement practices which needlessly drain homebuyers and homesellers of hundreds of millions of dollars. H.R. 9989 would do this under Section 102(c). This subsection, comprised of just two lines, would repeal Section 701 of the Emergency Home Finance Act of 1970, which grants the Department of Housing and Urban Development the authority to establish maximum settlement charges for FHA and VA residential mortgage transactions where needed in various sections of the country.

Those who support it have labeled H.R. 9989 a consumer protection bill. If this is so, how does its sponsor explain the fact that not one consumer-oriented organization in the nation favors the measure in its present form? Indeed, the AFL-CIO, U.S. Steel Workers, Communications Workers, International Ladies Garment Workers, Amalgamated Meatcutters, Consumer Federation of America, National Consumers Congress, Congress Watch, Public Citizens Litigation and others are all emphatically calling for retention of HUD's authority to regulate maximum settlement charges applied to FHA and VA residential mortgage loans.

There are other areas of the bill which are seriously inadequate, but its most glaring fault, elimination of HUD's regulatory authority, must be erased to give the measure even a suggestion of acceptability in the public and consumer interest community of the country.

The enormous problems presented by abusive real estate settlement practices and the remedies that could be provided through retention of Section 701 authority are matters of direct concern to Congress. HUD's authority to regulate settlement costs is designed to safeguard the low and moderate income family homebuyers, the very people who are the chief beneficiaries of all federally insured and guaranteed housing programs which were designed and adopted by Congress to help provide a decent home for every American family. Furthermore, these housing programs are meant to serve as the keystone in the

effort to meeting our national housing goals which were set by legislation approved by the Banking and Currency Committee.

The authority provided by Section 701 of the Emergency Home Finance Act of 1970 carries the immediate potential of saving FHA and VA residential mortgage borrowers a minimum of $57 million a year. During 1973 there were 568,000 FHA and VA residential real estate transactions—20 percent of the total residential real estate transactions for that period. Implementation of maximum settlement charges by HUD in this area of the residential mortgage market could conservatively mean an average saving of $100 in each transaction, or a total potential minimum saving of $57 million.

The word "minimum" is used to characterize potential savings because of the decline of FHA assisted housing programs due to the Administration's moratorium on them. As a result, the total FHA program has been reduced from one-third of all residential mortgage transactions to one-fifth of the total, a pattern that must and will be reversed in the immediate future. Recovery of its former share of the residential mortgage market by FHA could mean annual savings to homebuyers and homesellers of $95 million to $100 million if HUD's authority to regulate maximum settlement costs remains intact.

The benefits to be achieved through retention and use of HUD's authority to regulate will surpass even these savings. Implementation of maximum settlement charge regulations by HUD where they are needed will establish a yardstick to measure the fair cost of settlement services for conventional as well as federally insured and guaranteed residential mortgage transactions. As a result, all homebuyers and homesellers will benefit, even though the authority applies only to FHA and VA home loans.

Moreover, the existence of HUD's authority to regulate FHA and VA settlement charges, although never used, has served to motivate a growing number of state legislatures to adopt real estate settlement reform measures on their own. Such measures were approved during the last sessions of the New York, Massachusetts, Connecticut, Maryland and North Carolina legislatures. And settlement reform proposals are under consideration in other states and in the District of Columbia.

This activity is taking place largely because the existence of HUD's authority to regulate has placed state legislatures and those involved in the settlement industry on notice that they face the possibility of federal regulation by a simple administrative decision to do so unless they take remedial action of their own. By the same token, removal of HUD's authority to regulate will notify the states that the federal government is no longer interested in the subject, and the incentive for state and local governments to act will vanish.

The fact that HUD's authority to regulate maximum settlement charges has never been used reflects political pressure exerted on the Administration by the settlement industry rather than any inability, on the part of HUD to act. Under the leadership of Secretary Romney, HUD, as it was directed to do by the 1970 legislation, conducted a thorough and extensive study of settlement problems across the country. It concluded that regulation of maximum settlement charges was necessary. With the authority provided by the Emergency Home Finance Act, HUD published proposed maximums for six metropolitan areas in the Federal Register in July, 1972. The six cities—Washington, D.C.; Cleveland, Ohio; Newark, New Jersey; San Francisco-

Oakland, California; Seattle, Washington; and St. Louis, Missouri—are among the highest settlement cost areas in the nation.

Settlement charges, more often than not, constitute one of the largest single payments families ever have to make in the purchase of their home. Inflated settlement costs needlessly drain low and moderate income families of meager financial resources and frequently present insurmountable obstacles to the purchase of homes financed under programs established and sustained by Congress.

In drafting its proposed maximums for the six metropolitan areas, the first which were to be regulated, HUD demonstrated its conviction not only that protection from excessive settlement charges was needed, but entirely possible.

At this point two things happened. Secretary Romney retired from HUD to be succeeded by Secretary Lynn, and the settlement industry awoke with alarm to the provisions of Section 701 of the Emergency Home Finance Act of 1970 and what was being done with them. Under these circumstances. it is not surprising that HUD's official line now asserts that regulation of settlement costs is not possible, a position which would be pathetically amusing were it not for the seriousness of settlement overcharges which are bilking low and moderate income families and veterans of millions upon millions of dollars.

Our responsibility to the nation and to our constituents is clear. We must amend H.R. 9989 to retain HUD's authority to regulate maximum settlement charges applied to federally insured and guaranteed mortgages. The low and moderate income families who comprise this area of the mortgage market are desperately in need of protection. Retention of HUD's authority will send a message to that Department that it should immediately begin to provide that protection.

WRIGHT PATMAN.
WILLIAM A. BARRETT.
LEONOR K. SULLIVAN.
THOMAS L. ASHLEY.
EDWARD I. KOCH.
PARREN J. MITCHELL.
WALTER E. FAUNTROY.
FORTNEY H. (PETE) STARK, Jr.

Supplemental Views of Congressman Joe Moakley

Of the two bills which have been presented to the Committee, some important differences exist which should be noted. These deal with essentially two important areas: one involving kickbacks in fees to attorneys or agents of lenders, the other dealing with HUD's authorization to regulate closing costs for the industry as a whole. Another area which the House should consider at a later date is a cost sharing plan.

1. KICKBACKS

We are well aware of the difficulties, if not the impossibility of attempting to correct fee-splitting practices. While section 106(c) of H.R. 9989 appears to be a loophole clause allowing fee-splitting to simply enter under another door, there is actually no question that fees for legal services are properly due those persons who perform necessary and ethical services. Obviously, the weight of knowledge and expertise lies on the side of lending institutions and attorneys who make a career of little else other than business of such nature and obviously, too, the consumer needs as much help as is *practicably* possible. What could give a bill some muscle in this area would be to require Title Insurance companies to inform buyers (along with other information to be provided) that legal services are not mandatory in order to institute or consumate mortgage transactions, and/or that should such services be sought, lending institutions not be permitted to channel consumers to any particular attorney or agent. This, coupled with the information booklet provided by HUD, could help to keep borrowers out of the hands of disreputable practicers and should be considered by Congress in the future.

2. COST-SHARING PROPOSALS

Unfortunately, we have not addressed ourselves to the possibility of sellers sharing settlement costs with lenders and borrowers. After all, sellers also have a vested interest and stand to profit by the sale of their property. In the sale of almost any other commodity, it is usually incumbent upon the *seller* to provide proof of the conditions of the sale item. Why should a buyer be burdened with the entire costs of verifying the outlines and conditions of what he is purchasing? This practice of placing the full responsibility on the borrower's shoulders has gown out of the horse-trading methods of the past and indicates the need to up-date the entire realm of land sales. Requiring the seller to share settlement costs would be a giant step in this direction.

3. SECTION 701 OF THE 1970 EMERGENCY HOME FINANCE ACT

Here is the most important single item to be considered in passage of any real estate settlement costs act. No Member of Congress is unaware of the problems involved when government attempts to regulate

industry practices. However, these situations arise out of some industry's failure to perform its own regulating. The Committee-approved Bill calls for a feasibility study to be performed by HUD. Such study report, after a two-year period would indicate whether or not government regulations of real estate settlement costs will be necessary. It was the investigation arising out of this very provision which revealed the abuses before. It was the consumer protective power intimated in the very existence of this provision which has acted as the stimulus to whatever industry reforms have taken place. The government has been criticized for having on its books an act which it has not been used. Yet, we must remind ourselves that if this act, simply by being, has encouraged private industry to clean its own house, *without* any overt action by the government, then the act has proved its own reason for existing. It serves as a reminder that should this industry forget its sense of responsibility to the fragmented type of public with which it deals, the government is prepared to put its foot on the consumers side of the see-saw to bring it back into balance. Repeal of Section 701 of the 1970 Home Finance Act, I believe, weakens this bill. Therefore, I would sincerely urge my colleagues to restore this provision on the floor.

JOE MOAKLEY.

SEPARATE VIEWS OF THE HONORABLE STEWART N. McKINNEY

The repeal of Section 701 of the Emergency Home Finance Act of 1970 by the House Banking and Currency Committee was an unfortunate decision and I would recommend that HUD's authority to set maximum settlement charges on FHA and VA mortgages be restored when H.R. 9989 comes to the floor for a vote.

HUD has indicated that repeal is warranted because federal regulations of settlement costs on a nationwide basis would be virtually impossible in view of the wide variances in settlement practices and that such regulations, even if possible, could be achieved only at a very high administrative cost widely out of proportion to the benefits that would be received by consumers.

While I recognize the legitimate difficulties in establishing a new regulatory bureaucracy in HUD to control settlement costs. I believe that by HUD's retaining their authority to regulate the states will be encouraged to reform settlement costs practices. The point I'm stressing then is the club in the closet approach to reform. The federal government has a vested interest in insuring that tax-supported programs such as VA and FHA mortgage programs are not being victimized by abusive practices. If the states can handle the job, all to the better. But if there are continuing outstanding examples of settlement cost irregularities, then the federal government must have a tool to take action. If Section 701 is not restored, HUD will not have that authority and I just don't believe that that is in the best interests of those citizens who utilize FHA or VA mortgages.

STEWART B. MCKINNEY.

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S. 3164

Ninety-third Congress of the United States of America

AT THE SECOND SESSION

Begun and held at the City of Washington on Monday, the twenty-first day of January, one thousand nine hundred and seventy-four

An Act

To further the national housing goal of encouraging homeownership by regulating certain lending practices and closing and settlement procedures in federally related mortgage transactions to the end that unnecessary costs and difficulties of purchasing housing are minimized, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Real Estate Settlement Procedures Act of 1974".

FINDINGS AND PURPOSE

SEC. 2. (a) The Congress finds that significant reforms in the real estate settlement process are needed to insure that consumers throughout the Nation are provided with greater and more timely information on the nature and costs of the settlement process and are protected from unnecessarily high settlement charges caused by certain abusive practices that have developed in some areas of the country. The Congress also finds that it has been over two years since the Secretary of Housing and Urban Development and the Administrator of Veterans' Affairs submitted their joint report to the Congress on "Mortgage Settlement Costs" and that the time has come for the recommendations for Federal legislative action made in that report to be implemented.

(b) It is the purpose of this Act to effect certain changes in the settlement process for residential real estate that will result—

(1) in more effective advance disclosure to home buyers and sellers of settlement costs;

(2) in the elimination of kickbacks or referral fees that tend to increase unnecessarily the costs of certain settlement services;

(3) in a reduction in the amounts home buyers are required to place in escrow accounts established to insure the payment of real estate taxes and insurance; and

(4) in significant reform and modernization of local recordkeeping of land title information.

DEFINITIONS

SEC. 3. For purposes of this Act—

(1) the term "federally related mortgage loan" includes any loan which—

(A) is secured by residential real property (including individual units of condominiums and cooperatives) designed principally for the occupancy of from one to four families; and

(B) (i) is made in whole or in part by any lender the deposits or accounts of which are insured by any agency of the Federal Government, or is made in whole or in part by any lender which is regulated by any agency of the Federal Government; or

(ii) is made in whole or in part, or insured, guaranteed, supplemented, or assisted in any way, by the Secretary or any other officer or agency of the Federal Government or under or in connection with a housing or urban development

program administered by the Secretary or a housing or related program administered by any other such officer or agency; or

(iii) is eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or from any financial institution from which it could be purchased by the Federal Home Loan Mortgage Corporation; or

(iv) is made in whole or in part by any "creditor", as defined in section 103(f) of the Consumer Credit Protection Act (15 U.S.C. 1602(f)), who makes or invests in residential real estate loans aggregating more than $1,000,000 per year;

(2) the term "thing of value" includes any payment, advance, funds, loan, service, or other consideration;

(3) the term "settlement services" includes any service provided in connection with a real estate settlement including, but not limited to, the following: title searches, title examinations, the provision of title certificates, title insurance, services rendered by an attorney, the preparation of documents, property surveys, the rendering of credit reports or appraisals, pest and fungus inspections, services rendered by a real estate agent or broker, and the handling of the processing, and closing or settlement;

(4) the term "title company" means any institution which is qualified to issue title insurance, directly or through its agents, and also refers to any duly authorized agent of a title company;

(5) the term "person" includes individuals, corporations, associations, partnerships, and trusts; and

(6) the term "Secretary" means the Secretary of Housing and Urban Development.

UNIFORM SETTLEMENT STATEMENT

SEC. 4. The Secretary, in consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, shall develop and prescribe a standard form for the statement of settlement costs which shall be used (with such minimum variations as may be necessary to reflect unavoidable differences in legal and administrative requirements or practices in different areas of the country) as the standard real estate settlement form in all transactions in the United States which involve federally related mortgage loans. Such form shall conspicuously and clearly itemize all charges imposed upon the borrower and all charges imposed upon the seller in connection with the settlement and shall indicate whether any title insurance premium included in such charges covers or insures the lender's interest in the property, the borrower's interest, or both. Such form shall include all information and data required to be provided for such transactions under the Truth in Lending Act and the regulations issued thereunder by the Federal Reserve Board, and may be used in satisfaction of the disclosure requirements of that Act, and shall also include provision for execution of the waiver allowed by section 6(c).

SPECIAL INFORMATION BOOKLETS

SEC. 5. (a) The Secretary shall prepare and distribute booklets to help persons borrowing money to finance the purchase of residential real estate better to understand the nature and costs of real estate settlement services. The Secretary shall distribute such booklets to all lenders which make federally related mortgage loans.

(b) Each booklet shall be in such form and detail as the Secretary shall prescribe and, in addition to such other information as the Secretary may provide, shall include in clear and concise language—

(1) a description and explanation of the nature and purpose of each cost incident to a real estate settlement;

(2) an explanation and sample of the standard real estate settlement form developed and prescribed under section 4;

(3) a description and explanation of the nature and purpose of escrow accounts when used in connection with loans secured by residential real estate;

(4) an explanation of the choices available to buyers of residential real estate in selecting persons to provide necessary services incident to a real estate settlement; and

(5) an explanation of the unfair practices and unreasonable or unnecessary charges to be avoided by the prospective buyer with respect to a real estate settlement.

Such booklets shall take into consideration differences in real estate settlement procedures which may exist among the several States and territories of the United States and among separate political subdivisions within the same State and territory.

(c) Each lender referred to in subsection (a) shall provide the booklet described in such subsection to each person from whom it receives an application to borrow money to finance the purchase of residential real estate. Such booklet shall be provided at the time of receipt of such application.

(d) Booklets may be printed and distributed by lenders if their form and content are approved by the Secretary as meeting the requirements of subsection (b) of this section.

ADVANCE DISCLOSURE OF SETTLEMENT COSTS

SEC. 6. (a) Any lender agreeing to make a federally related mortgage loan shall provide or cause to be provided to the prospective borrower, to the prospective seller, and to any officer or agency of the Federal Government proposing to insure, guarantee, supplement, or assist such loan, at the time of the loan commitment, but in no case later than twelve calendar days prior to settlement, upon the standard real estate settlement form developed and prescribed under section 4, or upon a form developed and prescribed by the Secretary specifically for the purposes of this section, and in accordance with regulations prescribed by the Secretary, an itemized disclosure in writing of each charge arising in connection with such settlement. For the purposes of complying with this section, it shall be the duty of the lender agreeing to make the loan to obtain or cause to be obtained from persons who provide or will provide services in connection with such settlement the amount of each charge they intend to make. In the event the exact amount of any such charge is not available, a good faith estimate of such charge may be provided.

(b) If any lender fails to provide a prospective borrower or seller with the disclosure as required by subsection (a), it shall be liable to such borrower or seller, as the case may be, in an amount equal to—

(1) the actual damages involved or $500, whichever is greater, and

(2) in the case of any successful action to enforce the foregoing liability, the court costs of the action together with a reasonable attorney's fee as determined by the court;

except that a lender may not be held liable for a violation in any action brought under this subsection if it shows by a preponderance of the evidence that the violation was not intentional and resulted

from a bona fide error notwithstanding the maintenance of procedures adopted to avoid any such error.

(c) The provisions of subsection (a) shall be deemed to be satisfied with respect to a borrower or seller in connection with any settlement involving a federally related mortgage loan if the disclosure required by subsection (a) is provided at any time prior to settlement and the prospective borrower or seller, as the case may be, executes, under terms and conditions prescribed by regulations to be issued by the Secretary after consultation with the appropriate Federal agencies, a waiver of the requirement that the disclosure be provided at least twelve calendar days prior to such settlement. In issuing such regulations, the Secretary shall take into account the need to protect the borrower's and the seller's right to a timely disclosure.

d) With respect to any particular transaction involving a federally related mortgage loan, no borrower shall maintain an action or separate actions against any lender under both the provisions of this section and the provisions of section 130 of the Consumer Credit Protection Act (15 U.S.C. 1640).

(e) The provisions of this Act shall supersede the provisions of section 121(c) of the Consumer Credit Protection Act insofar as the latter applies to federally related mortgage loans as defined in this Act.

DISCLOSURE OF PREVIOUS SELLING PRICE OF EXISTING REAL PROPERTY

SEC. 7. (a) No lender shall make any commitment for a federally related mortgage loan on a residence on which construction has been completed more than twelve months prior to the date of such commitment unless it has confirmed that the following information has been disclosed in writing by the seller or his agent to the buyer—

(1) the name and address of the present owner of the property being sold;

(2) the date the property was acquired by the present owner (the year only if the property was acquired more than two years previously); and

(3) if the seller has not owned the property for at least two years prior to the date of the loan application and has not used the property as a place of residence, the date and purchase price of the last arm's length transfer of the property, a list of any subsequent improvements made to the property (excluding maintenance repairs) and the cost of such improvements.

(b) the obligations imposed upon a lender by this section shall be deemed satisfied and a commitment for a federally related mortgage loan may thereafter be made if the lender receives a copy of the written statement provided by the seller to the buyer supplying the information required by subsection (a).

(c) Whoever knowingly and willfully provides false information under this section or otherwise willfully fails to comply with its requirements shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

PROHIBITION AGAINST KICKBACKS AND UNEARNED FEES

SEC. 8. (a) No person shall give and no person shall accept any fee, kickback, or thing of value pursuant to any agreement or understanding, oral or otherwise, that business incident to or a part of a real estate settlement service involving a federally related mortgage loan shall be referred to any person.

(b) No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering

of a real estate settlement service in connection with a transaction involving a federally related mortgage loan other than for services actually performed.

(c) Nothing in this section shall be construed as prohibiting (1) the payment of a fee (A) to attorneys at law for services actually rendered or (B) by a title company to its duly appointed agent for services actually performed in the issuance of a policy of title insurance or (C) by a lender to its duly appointed agent for services actually performed in the making of a loan, or (2) the payment to any person of a bona fide salary or compensation or other payment for goods or facilities actually furnished or for services actually performed.

(d) (1) Any person or persons who violate the provisions of this section shall be fined not more than $10,000 or imprisoned for not more than one year, or both.

(2) In addition to the penalties provided by paragraph (1) of this subsection, any person or persons who violate the provisions of subsection (a) shall be jointly and severally liable to the person or persons whose business has been referred in an amount equal to three times the value or amount of the fee or thing of value, and any person or persons who violate the provisions of subsection (b) shall be jointly and severally liable to the person or persons charged for the settlement services involved in an amount equal to three times the amount of the portion, split, or percentage. In any successful action to enforce the liability under this paragraph, the court may award the court costs of the action together with a reasonable attorney's fee as determined by the court.

TITLE COMPANIES

SEC. 9. (a) No seller of property that will be purchased with the assistance of a federally related mortgage loan shall require directly or indirectly, as a condition to selling the property, that title insurance covering the property be purchased by the buyer from any particular title company.

(b) Any seller who violates the provisions of subsection (a) shall be liable to the buyer in an amount equal to three times all charges made for such title insurance.

LIMITATION ON REQUIREMENT OF ADVANCE DEPOSITS IN ESCROW ACCOUNTS

SEC. 10. No lender, in connection with a federally related mortgage loan, shall require the borrower or prospective borrower—

(1) to deposit in any escrow account which may be established in connection with such loan for the purpose of assuring payment of taxes and insurance premiums with respect to the property, prior to or upon the date of settlement, an aggregate sum (for such purpose) in excess of—

(A) in any jurisdiction where such taxes and insurance premiums are postpaid, the total amount of such taxes and insurance premiums which will actually be due and payable on the date of settlement and the pro rata portion thereof which has accrued, or

(B) in any jurisdiction where such taxes and insurance premiums are prepaid, a pro rata portion of the estimated taxes and insurance premiums corresponding to the number of months from the last date of payment to the date of settlement,

plus one-twelfth of the estimated total amount of such taxes and insurance premiums which will become due and payable during the twelve-month period beginning on the date of settlement; or

(2) to deposit in any such escrow account in any month beginning after the date of settlement a sum (for the purpose of assuring payment of taxes and insurance premiums with respect to the property) in excess of one-twelfth of the total amount of the estimated taxes and insurance premiums which will become due and payable during the twelve-month period beginning on the first day of such month, except that in the event the lender determines there will be a deficiency on the due date he shall not be prohibited from requiring additional monthly deposits in such escrow account of pro rata portions of the deficiency corresponding to the number of months from the date of the lender's determination of such deficiency to the date upon which such taxes and insurance premiums become due and payable.

LIMITATIONS AND DISCLOSURES WITH RESPECT TO CERTAIN FEDERALLY RELATED MORTGAGE LOANS

SEC. 11. (a) The Federal Deposit Insurance Act is amended by adding at the end thereof the following new section:

"SEC. 25. (a) No insured bank, or mutual savings or cooperative bank which is not an insured bank, shall make any federally related mortgage loan to any agent, trustee, nominee, or other person acting in a fiduciary capacity without the prior condition that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the bank. At the request of the Corporation, the bank shall report to the Corporation on the identity of such person and the nature and amount of the loan, discount, or other extension of credit.

"(b) In addition to other available remedies, this section may be enforced with respect to mutual savings and cooperative banks which are not insured banks in accordance with section 8 of this Act, and for such purpose such mutual savings and cooperative banks shall be held and considered to be State nonmember insured banks and the appropriate Federal agency with respect to such mutual savings and cooperative banks shall be the Federal Deposit Insurance Corporation."

(b) Title IV of the National Housing Act is amended by adding at the end thereof the following new section:

"SEC. 413. No insured institution shall make any federally related mortgage loan to any agent, trustee, nominee, or other person acting in a fiduciary capacity without the prior condition that the identity of the person receiving the beneficial interest of such loan shall at all times be revealed to the institution. At the request of the Federal Home Loan Bank Board, the insured institution shall report to the Board on the identity of such person and the nature and amount of the loan."

(c) The Federal Deposit Insurance Corporation or the Federal Home Loan Bank Board as appropriate may by regulation exempt classes or types of transactions from the provisions added by this section if the Corporation or the Board determines that the purposes of such provisions would not be advanced materially by their application to such transactions.

FEE FOR PREPARATION OF TRUTH-IN-LENDING AND UNIFORM SETTLEMENT STATEMENTS

SEC. 12. No fee shall be imposed or charge made upon any other person (as a part of settlement costs or othewise) by a lender in connection with a federally related mortgage loan made by it (or a loan for the purchase of a mobile home), for or on account of the preparation and submission by such lender of the statement or statements required (in connection with such loan) by sections 4 and 6 of this Act or by the Truth in Lending Act.

ESTABLISHMENT ON DEMONSTRATION BASIS OF LAND PARCEL RECORDATION SYSTEM

SEC. 13. The Secretary shall establish and place in operation on a demonstration basis, in representative political subdivisions (selected by him) in various areas of the United States, a model system or systems for the recordation of land title information in a manner and form calculated to facilitate and simplify land transfers and mortgage transactions and reduce the cost thereof, with a view to the possible development (utilizing the information and experience gained under this section) of a nationally uniform system of land parcel recordation.

REPORT OF THE SECRETARY ON NECESSITY FOR FURTHER CONGRESSIONAL ACTION

SEC. 14. (a) The Secretary, after consultation with the Administrator of Veterans' Affairs, the Federal Deposit Insurance Corporation, and the Federal Home Loan Bank Board, and after such study, investigation, and hearings (at which representatives of consumers groups shall be allowed to testify) as he deems appropriate, shall, not less than three years nor more than five years from the effective date of this Act, report to the Congress on whether, in view of the implementation of the provisions of this Act imposing certain requirements and prohibiting certain practices in connection with real estate settlements, there is any necessity for further legislation in this area.

(b) If the Secretary concludes that there is necessity for further legislation, he shall report to the Congress on the specific practices or problems that should be the subject of such legislation and the corrective measures that need to be taken. In addition, the Secretary shall include in his report—

(1) recommendations on the desirability of requiring lenders of federally related mortgage loans to bear the costs of particular real estate settlement services that would otherwise be paid for by borrowers;

(2) recommendations on whether Federal regulation of the charges for real estate settlement services in federally related mortgage transactions is necessary and desirable, and, if he concludes that such regulation is necessary and desirable, a description and analysis of the regulatory scheme he believes Congress should adopt; and

(3) recommendations on the ways in which the Federal Government can assist and encourage local governments to modernize their methods for the recordation of land title information, including the feasibility of providing financial assistance or incentives to local governments that seek to adopt one of the model systems developed by the Secretary in accordance with the provisions of section 13 of this Act.

DEMONSTRATION TO DETERMINE FEASIBILITY OF INCLUDING STATEMENTS OF SETTLEMENT COSTS IN SPECIAL INFORMATION BOOKLETS

SEC. 15. The Secretary shall, on a demonstration basis in selected housing market areas, have prepared and included in the special information booklets required to be furnished under section 5 of this Act, statements of the range of costs for specific settlement services in such areas. Not later than June 30, 1976, the Secretary shall transmit to the Congress a full report on the demonstration conducted under this section. Such report shall contain the Secretary's assessment of the

feasibility of preparing and including settlement cost range statements for all housing market areas in the special information booklets for such areas.

JURISDICTION OF COURTS

SEC. 16. Any action to recover damages pursuant to the provisions of section 6, 8, or 9 may be brought in the United States district court for the district in which the property involved is located, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

VALIDITY OF CONTRACTS AND LIENS

SEC. 17. Nothing in this Act shall affect the validity or enforceability of any sale or contract for the sale of real property or any loan, loan agreement, mortgage, or lien made or arising in connection with a federally related mortgage loan.

RELATION TO STATE LAWS

SEC. 18. (a) This Act does not annul, alter, or affect, or exempt any person subject to the provisions of this Act from complying with, the laws of any State with respect to settlement practices, except to the extent that those laws are inconsistent with any provision of this Act, and then only to the extent of the inconsistency. The Secretary is authorized to determine whether such inconsistencies exist. The Secretary may not determine that any State law is inconsistent with any provision of this Act if the Secretary determines that such law gives greater protection to the consumer. In making these determinations the Secretary shall consult with the appropriate Federal agencies.

(b) No provision of this Act or of the laws of any State imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Secretary, notwithstanding that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

EFFECTIVE DATE

SEC. 19. The provisions of this Act, and the amendments made thereby, shall become effective one hundred and eighty days after the date of the enactment of this Act.

Speaker of the House of Representatives.

Vice President of the United States and
President of the Senate.

(3)

December 12, 1974

Dear Mr. Director:

The following bills were received at the White House on December 12th:

S. 782 ✓
S. 3164 ✓
H.R. 10337 ✓
H.R. 17505 ✓

Please let the President have reports and recommendations as to the approval of these bills as soon as possible.

Sincerely,

Robert D. Linder
Chief Executive Clerk

The Honorable Roy L. Ash
Director
Office of Management and Budget
Washington, D. C.