

105TH CONGRESS
1ST SESSION

S. 318

AN ACT

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

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Homeowners Protection Act of 1997”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

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

3 **SEC. 2. DEFINITIONS.**

4 In this Act, the following definitions shall apply:

5 (1) **ADJUSTABLE RATE MORTGAGE.**—The term
 6 “adjustable rate mortgage” means a residential
 7 mortgage that has an interest rate that is subject to
 8 change.

9 (2) **CANCELLATION DATE.**—The term “can-
 10 cellation date” means—

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

14 (i) based solely on the initial amorti-
 15 zation schedule for that mortgage, and ir-
 16 respective of the outstanding balance for
 17 that mortgage on that date, is first sched-
 18 uled to reach 80 percent of the original
 19 value of the property securing the loan; or

1 (ii) based solely on actual payments,
 2 reaches 80 percent of the original value of
 3 the property securing the loan; and

4 (B) with respect to an adjustable rate
 5 mortgage, at the option of the mortgagor, the
 6 date on which the principal balance of the mort-
 7 gage—

8 (i) based solely on amortization sched-
 9 ules for that mortgage, and irrespective of
 10 the outstanding balance for that mortgage
 11 on that date, is first scheduled to reach 80
 12 percent of the original value of the prop-
 13 erty securing the loan; or

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

17 (3) FIXED RATE MORTGAGE.—The term “fixed
 18 rate mortgage” means a residential mortgage that
 19 has an interest rate that is not subject to change.

20 (4) GOOD PAYMENT HISTORY.—The term “good
 21 payment history” means, with respect to a mortga-
 22 gator, that the mortgagor has not—

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

1 which the mortgage reaches the cancellation
2 date; or

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

7 (5) INITIAL AMORTIZATION SCHEDULE.—The
8 term “initial amortization schedule” means a sched-
9 ule established at the time at which a residential
10 mortgage transaction is consummated with respect
11 to a fixed rate mortgage, showing—

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

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

18 (6) MORTGAGE INSURANCE.—The term “mort-
19 gage insurance” means insurance, including any
20 mortgage guaranty insurance, against the nonpay-
21 ment of, or default on, an individual mortgage or
22 loan involved in a residential mortgage transaction.

23 (7) MORTGAGE INSURER.—The term “mortgage
24 insurer” means a provider of private mortgage in-
25 surance, as described in this Act, that is authorized

1 to transact such business in the State in which the
2 provider is transacting such business.

3 (8) MORTGAGEE.—The term “mortgagee”
4 means the holder of a residential mortgage at the
5 time at which that mortgage transaction is con-
6 summated.

7 (9) MORTGAGOR.—The term “mortgagor”
8 means the original borrower under a residential
9 mortgage or his or her successors or assignees.

10 (10) ORIGINAL VALUE.—The term “original
11 value”, with respect to a residential mortgage,
12 means the lesser of the sales price of the property
13 securing the mortgage, as reflected in the contract,
14 or the appraised value at the time at which the sub-
15 ject residential mortgage transaction was con-
16 summated.

17 (11) PRIVATE MORTGAGE INSURANCE.—The
18 term “private mortgage insurance” means mortgage
19 insurance other than mortgage insurance made
20 available under the National Housing Act, title 38 of
21 the United States Code, or title V of the Housing
22 Act of 1949.

23 (12) RESIDENTIAL MORTGAGE.—The term
24 “residential mortgage” means a mortgage, loan, or
25 other evidence of a security interest created with re-

1 spect to a single-family dwelling that is the primary
2 residence of the mortgagor.

3 (13) RESIDENTIAL MORTGAGE TRANSACTION.—

4 The term “residential mortgage transaction” means
5 a transaction consummated on or after the date that
6 is 1 year after the date of enactment of this Act, in
7 which a mortgage, deed of trust, purchase money se-
8 curity interest arising under an installment sales
9 contract, or equivalent consensual security interest is
10 created or retained against a single-family dwelling
11 that is the primary residence of the mortgagor to fi-
12 nance the acquisition, initial construction, or re-
13 financing of that dwelling.

14 (14) SERVICER.—The term “servicer” has the
15 same meaning as in section 6(i)(2) of the Real Es-
16 tate Settlement Procedures Act of 1974, with re-
17 spect to a residential mortgage.

18 (15) SINGLE-FAMILY DWELLING.—The term
19 “single-family dwelling” means a residence consist-
20 ing of 1 family dwelling unit.

21 (16) TERMINATION DATE.—The term “termi-
22 nation date” means—

23 (A) with respect to a fixed rate mortgage,
24 the date on which the principal balance of the
25 mortgage, based solely on the initial amortiza-

1 tion schedule for that mortgage, and irrespec-
2 tive of the outstanding balance for that mort-
3 gage on that date, is first scheduled to reach 78
4 percent of the original value of the property se-
5 curing the loan; and

6 (B) with respect to an adjustable rate
7 mortgage, the date on which the principal bal-
8 ance of the mortgage, based solely on amortiza-
9 tion schedules for that mortgage, and irrespec-
10 tive of the outstanding balance for that mort-
11 gage on that date, is first scheduled to reach 78
12 percent of the original value of the property se-
13 curing the loan.

14 **SEC. 3. TERMINATION OF PRIVATE MORTGAGE INSURANCE.**

15 (a) **BORROWER CANCELLATION.**—A requirement for
16 private mortgage insurance in connection with a residen-
17 tial mortgage transaction shall be canceled on the can-
18 cellation date, if the mortgagor—

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

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

23 (3) has satisfied any requirement of the holder
24 of the mortgage (as of the date of a request under
25 paragraph (1)) for—

1 (A) evidence (of a type established in ad-
2 vance and made known to the mortgagor by the
3 servicer promptly upon receipt of a request
4 under paragraph (1)) that the value of the
5 property securing the mortgage has not de-
6 clined below the original value of the property;
7 and

8 (B) certification that the equity of the
9 mortgagor in the residence securing the mort-
10 gage is unencumbered by a subordinate lien.

11 (b) **AUTOMATIC TERMINATION.**—A requirement for
12 private mortgage insurance in connection with a residen-
13 tial mortgage transaction shall terminate with respect to
14 payments for that mortgage insurance made by the mort-
15 gator—

16 (1) on the termination date if, on that date, the
17 mortgagor is current on the payments required by
18 the terms of the residential mortgage transaction; or

19 (2) on the date after the termination date on
20 which the mortgagor becomes current on the pay-
21 ments required by the terms of the residential mort-
22 gage transaction.

23 (c) **FINAL TERMINATION.**—If a requirement for pri-
24 vate mortgage insurance is not otherwise canceled or ter-
25 minated in accordance with subsection (a) or (b), in no

1 case may such a requirement be imposed beyond the first
2 day of the month immediately following the date that is
3 the midpoint of the amortization period of the loan if the
4 mortgagor is current on the payments required by the
5 terms of the mortgage.

6 (d) NO FURTHER PAYMENTS.—No payments or pre-
7 miums may be required from the mortgagor in connection
8 with a private mortgage insurance requirement terminated
9 or canceled under this section—

10 (1) in the case of cancellation under subsection

11 (a), more than 30 days after the later of—

12 (A) the date on which a request under sub-
13 section (a)(1) is received; or

14 (B) the date on which the mortgagor satis-
15 fies any evidence and certification requirements
16 under subsection (a)(3);

17 (2) in the case of termination under subsection

18 (b), more than 30 days after the termination date or
19 the date referred to in subsection (b)(2), as applica-
20 ble; and

21 (3) in the case of termination under subsection
22 (c), more than 30 days after the final termination
23 date established under that subsection.

24 (e) RETURN OF UNEARNED PREMIUMS.—

1 (1) IN GENERAL.—Not later than 45 days after
2 the termination or cancellation of a private mortgage
3 insurance requirement under this section, all un-
4 earned premiums for private mortgage insurance
5 shall be returned to the mortgagor by the servicer.

6 (2) TRANSFER OF FUNDS TO SERVICER.—Not
7 later than 30 days after notification by the servicer
8 of termination or cancellation of private mortgage
9 insurance under this Act with respect to a mortga-
10 gor, a mortgage insurer that is in possession of any
11 unearned premiums of that mortgagor shall transfer
12 to the servicer of the subject mortgage an amount
13 equal to the amount of the unearned premiums for
14 repayment in accordance with paragraph (1).

15 (f) EXCEPTIONS FOR HIGH RISK LOANS.—

16 (1) IN GENERAL.—The termination and can-
17 cellation provisions in subsections (a) and (b) do not
18 apply to any residential mortgage or mortgage
19 transaction that, at the time at which the residential
20 mortgage transaction is consummated, has high
21 risks associated with the extension of the loan—

22 (A) as determined in accordance with
23 guidelines published by the Federal National
24 Mortgage Association and the Federal Home
25 Loan Mortgage Corporation, in the case of a

1 mortgage loan with an original principal bal-
2 ance that does not exceed the applicable annual
3 conforming loan limit for the secondary market
4 established pursuant to section 305(a)(2) of the
5 Federal Home Loan Mortgage Corporation Act,
6 so as to require the imposition or continuation
7 of a private mortgage insurance requirement
8 beyond the terms specified in subsection (a) or
9 (b) of section 3; or

10 (B) as determined by the mortgagee in the
11 case of any other mortgage, except that termi-
12 nation shall occur—

13 (i) with respect to a fixed rate mort-
14 gage, on the date on which the principal
15 balance of the mortgage, based solely on
16 the initial amortization schedule for that
17 mortgage, and irrespective of the outstand-
18 ing balance for that mortgage on that
19 date, is first scheduled to reach 77 percent
20 of the original value of the property secur-
21 ing the loan; and

22 (ii) with respect to an adjustable rate
23 mortgage, on the date on which the prin-
24 cipal balance of the mortgage, based solely
25 on amortization schedules for that mort-

1 gage, and irrespective of the outstanding
2 balance for that mortgage on that date, is
3 first scheduled to reach 77 percent of the
4 original value of the property securing the
5 loan.

6 (2) **TERMINATION AT MIDPOINT.**—A private
7 mortgage insurance requirement in connection with
8 a residential mortgage or mortgage transaction de-
9 scribed in paragraph (1) shall terminate in accord-
10 ance with subsection (c).

11 (3) **RULE OF CONSTRUCTION.**—Nothing in this
12 subsection may be construed to require a mortgage
13 or mortgage transaction described in paragraph
14 (1)(A) to be purchased by the Federal National
15 Mortgage Association or the Federal Home Loan
16 Mortgage Corporation.

17 **SEC. 4. DISCLOSURE REQUIREMENTS.**

18 (a) **DISCLOSURES FOR NEW MORTGAGES AT TIME OF**
19 **TRANSACTION.**—

20 (1) **DISCLOSURES FOR NON-EXEMPTED TRANS-**
21 **ACTIONS.**—In any case in which private mortgage
22 insurance is required in connection with a residential
23 mortgage or mortgage transaction (other than a
24 mortgage or mortgage transaction described in sec-
25 tion 3(f)(1)), at the time at which the transaction is

1 consummated, the mortgagee shall provide to the
2 mortgagor—

3 (A) if the transaction relates to a fixed
4 rate mortgage—

5 (i) a written initial amortization
6 schedule; and

7 (ii) written notice—

8 (I) that the mortgagor may can-
9 cel the requirement in accordance
10 with section 3(a) of this Act indicat-
11 ing the date on which the mortgagor
12 may request cancellation, based solely
13 on the initial amortization schedule;

14 (II) that the mortgagor may re-
15 quest cancellation in accordance with
16 section 3(a) of this Act earlier than
17 provided for in the initial amortization
18 schedule, based on actual payments;

19 (III) that the requirement for
20 private mortgage insurance will auto-
21 matically terminate on the termi-
22 nation date in accordance with section
23 3(b) of this Act, and what that termi-
24 nation date is with respect to that
25 mortgage; and

1 (IV) that there are exemptions to
2 the right to cancellation and auto-
3 matic termination of a requirement
4 for private mortgage insurance in ac-
5 cordance with section 3(f) of this Act,
6 and whether such an exemption ap-
7 plies at that time to that transaction;
8 and

9 (B) if the transaction relates to an adjust-
10 able rate mortgage, a written notice that—

11 (i) the mortgagor may cancel the re-
12 quirement in accordance with section 3(a)
13 of this Act on the cancellation date, and
14 that the servicer will notify the mortgagor
15 when the cancellation date is reached;

16 (ii) the requirement for private mort-
17 gage insurance will automatically termi-
18 nate on the termination date, and that on
19 the termination date, the mortgagor will be
20 notified of the termination or that the re-
21 quirement will be terminated as soon as
22 the mortgagor is current on loan pay-
23 ments; and

24 (iii) there are exemptions to the right
25 of cancellation and automatic termination

1 of a requirement for private mortgage in-
2 surance in accordance with section 3(f) of
3 this Act, and whether such an exemption
4 applies at that time to that transaction.

5 (2) DISCLOSURES FOR EXCEPTED TRANS-
6 ACTIONS.—In the case of a mortgage or mortgage
7 transaction described in section 3(f)(1), at the time
8 at which the transaction is consummated, the mort-
9 gagee shall provide written notice to the mortgagor
10 that in no case may private mortgage insurance be
11 required beyond the date that is the midpoint of the
12 amortization period of the loan, if the mortgagor is
13 current on payments required by the terms of the
14 residential mortgage.

15 (3) ANNUAL DISCLOSURES.—If private mort-
16 gage insurance is required in connection with a resi-
17 dential mortgage transaction, the servicer shall dis-
18 close to the mortgagor in each such transaction in
19 an annual written statement—

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

23 (B) an address and telephone number that
24 the mortgagor may use to contact the servicer

1 to determine whether the mortgagor may cancel
2 the private mortgage insurance.

3 (4) APPLICABILITY.—Paragraphs (1) through
4 (3) shall apply with respect to each residential mort-
5 gage transaction consummated on or after the date
6 that is 1 year after the date of enactment of this
7 Act.

8 (b) DISCLOSURES FOR EXISTING MORTGAGES.—If
9 private mortgage insurance was required in connection
10 with a residential mortgage entered into at any time be-
11 fore the effective date of this Act, the servicer shall dis-
12 close to the mortgagor in each such transaction in an an-
13 nual written statement—

14 (1) that the private mortgage insurance may,
15 under certain circumstances, be canceled by the
16 mortgagor (with the consent of the mortgagee or in
17 accordance with applicable State law); and

18 (2) an address and telephone number that the
19 mortgagor may use to contact the servicer to deter-
20 mine whether the mortgagor may cancel the private
21 mortgage insurance.

22 (c) INCLUSION IN OTHER ANNUAL NOTICES.—The
23 information and disclosures required under subsection (b)
24 and paragraphs (1)(B) and (3) of subsection (a) may be
25 provided on the annual disclosure relating to the escrow

1 account made as required under the Real Estate Settle-
 2 ment Procedures Act of 1974, or as part of the annual
 3 disclosure of interest payments made pursuant to Internal
 4 Revenue Service regulations, and on a form promulgated
 5 by the Internal Revenue Service for that purpose.

6 (d) STANDARDIZED FORMS.—The mortgagee or
 7 servicer may use standardized forms for the provision of
 8 disclosures required under this section.

9 **SEC. 5. NOTIFICATION UPON CANCELLATION OR TERMI-**
 10 **NATION.**

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

15 (1) that the private mortgage insurance has ter-
 16 minated and that the mortgagor no longer has pri-
 17 vate mortgage insurance; and

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

21 (b) NOTICE OF GROUNDS.—

22 (1) IN GENERAL.—If a servicer determines that
 23 a mortgage did not meet the requirements for termi-
 24 nation or cancellation of private mortgage insurance
 25 under subsection (a) or (b) of section 3, the servicer

1 shall provide written notice to the mortgagor of the
 2 grounds relied on to make the determination (includ-
 3 ing the results of any appraisal used to make the de-
 4 termination).

5 (2) TIMING.—Notice required by paragraph (1)
 6 shall be provided—

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

10 (i) the date on which a request is re-
 11 ceived under section 3(a)(1); or

12 (ii) the date on which the mortgagor
 13 satisfies any evidence and certification re-
 14 quirements under section 3(a)(3); and

15 (B) with respect to termination of private
 16 mortgage insurance under section 3(b), not
 17 later than 30 days after the scheduled termi-
 18 nation date.

19 **SEC. 6. DISCLOSURE REQUIREMENTS FOR LENDER PAID**
 20 **MORTGAGE INSURANCE.**

21 (a) DEFINITIONS.—For purposes of this section—

22 (1) the term “borrower paid mortgage insur-
 23 ance” means private mortgage insurance that is re-
 24 quired in connection with a residential mortgage

1 transaction, payments for which are made by the
2 borrower;

3 (2) the term “lender paid mortgage insurance”
4 means private mortgage insurance that is required
5 in connection with a residential mortgage trans-
6 action, payments for which are made by a person
7 other than the borrower; and

8 (3) the term “loan commitment” means a pro-
9 spective mortgagee’s written confirmation of its ap-
10 proval, including any applicable closing conditions, of
11 the application of a prospective mortgagor for a resi-
12 dential mortgage loan.

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

15 (c) NOTICES TO MORTGAGOR.—In the case of lender
16 paid mortgage insurance that is required in connection
17 with a residential mortgage or a residential mortgage
18 transaction—

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

23 (A) that lender paid mortgage insurance
24 differs from borrower paid mortgage insurance,
25 in that lender paid mortgage insurance may not

1 be canceled by the mortgagor, while borrower
2 paid mortgage insurance could be cancelable by
3 the mortgagor in accordance with section 3(a)
4 of this Act, and could automatically terminate
5 on the termination date in accordance with sec-
6 tion 3(b) of this Act;

7 (B) that lender paid mortgage insurance—

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

12 (ii) terminates only when the residen-
13 tial mortgage is refinanced, paid off, or
14 otherwise terminated; and

15 (C) that lender paid mortgage insurance
16 and borrower paid mortgage insurance both
17 have benefits and disadvantages, including a ge-
18 neric analysis of the differing costs and benefits
19 of a residential mortgage in the case lender
20 paid mortgage insurance versus borrower paid
21 mortgage insurance over a 10-year period, as-
22 suming prevailing interest and property appre-
23 ciation rates;

24 (D) that lender paid mortgage insurance
25 may be tax-deductible for purposes of Federal

1 income taxes, if the mortgagor itemizes ex-
2 penses for that purpose; and

3 (2) not later than 30 days after the termination
4 date that would apply in the case of borrower paid
5 mortgage insurance, the servicer shall provide to the
6 mortgagor a written notice indicating that the mort-
7 gagor may wish to review financing options that
8 could eliminate the requirement for private mortgage
9 insurance in connection with the residential mort-
10 gage.

11 (d) STANDARD FORMS.—The servicer of a residential
12 mortgage may develop and use a standardized form or
13 forms for the provision of notices to the mortgagor, as
14 required under subsection (c).

15 **SEC. 7. FEES FOR DISCLOSURES.**

16 No fee or other cost may be imposed on any mortga-
17 gor with respect to the provision of any notice or informa-
18 tion to the mortgagor pursuant to this Act.

19 **SEC. 8. CIVIL LIABILITY.**

20 (a) IN GENERAL.—Any servicer, mortgagee, or mort-
21 gage insurer that violates a provision of this Act shall be
22 liable to each mortgagor to whom the violation relates
23 for—

24 (1) in the case of an action by an individual, or
25 a class action in which the liable party is not subject

1 to section 10, any actual damages sustained by the
2 mortgagor as a result of the violation, including in-
3 terest (at a rate determined by the court) on the
4 amount of actual damages, accruing from the date
5 on which the violation commences;

6 (2) in the case of—

7 (A) an action by an individual, such statu-
8 tory damages as the court may allow, not to ex-
9 ceed \$2,000; and

10 (B) in the case of a class action—

11 (i) in which the liable party is subject
12 to section 10, such amount as the court
13 may allow, except that the total recovery
14 under this subparagraph in any class ac-
15 tion or series of class actions arising out of
16 the same violation by the same liable party
17 shall not exceed the lesser of \$500,000 or
18 1 percent of the net worth of the liable
19 party, as determined by the court; and

20 (ii) in which the liable party is not
21 subject to section 10, such amount as the
22 court may allow, not to exceed \$1000 as to
23 each member of the class, except that the
24 total recovery under this subparagraph in
25 any class action or series of class actions

1 arising out of the same violation by the
2 same liable party shall not exceed the less-
3 er of \$500,000 or 1 percent of the gross
4 revenues of the liable party, as determined
5 by the court;

6 (3) costs of the action; and

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

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

13 (c) LIMITATIONS ON LIABILITY.—

14 (1) IN GENERAL.—With respect to a residential
15 mortgage transaction, the failure of a servicer to
16 comply with the requirements of this Act due to the
17 failure of a mortgage insurer or a mortgagee to com-
18 ply with the requirements of this Act, shall not be
19 construed to be a violation of this Act by the
20 servicer.

21 (2) RULE OF CONSTRUCTION.—Nothing in
22 paragraph (1) shall be construed to impose any ad-
23 ditional requirement or liability on a mortgage in-
24 surer, a mortgagee, or a holder of a residential
25 mortgage.

1 **SEC. 9. EFFECT ON OTHER LAWS AND AGREEMENTS.**

2 (a) EFFECT ON STATE LAW.—

3 (1) IN GENERAL.—With respect to any residen-
4 tial mortgage or residential mortgage transaction
5 consummated after the effective date of this Act,
6 and except as provided in paragraph (2), the provi-
7 sions of this Act shall supersede any provisions of
8 the law of any State relating to requirements for ob-
9 taining or maintaining private mortgage insurance
10 in connection with residential mortgage transactions,
11 cancellation or automatic termination of such private
12 mortgage insurance, any disclosure of information
13 addressed by this Act, and any other matter specifi-
14 cally addressed by this Act.

15 (2) CONTINUED APPLICATION OF CERTAIN PRO-
16 VISIONS.—This Act does not supersede any provision
17 of the law of a State in effect on or before Septem-
18 ber 1, 1989, pertaining to the termination of private
19 mortgage insurance or other mortgage guaranty in-
20 surance, to the extent that such law requires termi-
21 nation of such insurance at an earlier date or when
22 a lower mortgage loan principal balance is achieved
23 than as provided in this Act.

24 (b) EFFECT ON OTHER AGREEMENTS.—The provi-
25 sions of this Act shall supersede any conflicting provision
26 contained in any agreement relating to the servicing of

1 a residential mortgage loan entered into by the Federal
2 National Mortgage Association, the Federal Home Loan
3 Mortgage Corporation, or any private investor or note
4 holder (or any successors thereto).

5 **SEC. 10. ENFORCEMENT.**

6 (a) IN GENERAL.—Compliance with the requirements
7 imposed under this Act shall be enforced under—

8 (1) section 8 of the Federal Deposit Insurance
9 Act—

10 (A) by the appropriate Federal banking
11 agency (as defined in section 3(q) of the Fed-
12 eral Deposit Insurance Act) in the case of in-
13 sured depository institutions (as defined in sec-
14 tion 3(c)(2) of such Act);

15 (B) by the Federal Deposit Insurance Cor-
16 poration in the case of depository institutions
17 described in clause (i), (ii), or (iii) of section
18 19(b)(1)(A) of the Federal Reserve Act that are
19 not insured depository institutions (as defined
20 in section 3(c)(2) of the Federal Deposit Insur-
21 ance Act); and

22 (C) by the Director of the Office of Thrift
23 Supervision in the case of depository institu-
24 tions described in clause (v) and or (vi) of sec-
25 tion 19(b)(1)(A) of the Federal Reserve Act

1 that are not insured depository institutions (as
2 defined in section 3(c)(2) of the Federal De-
3 posit Insurance Act);

4 (2) the Federal Credit Union Act, by the Na-
5 tional Credit Union Administration Board in the
6 case of depository institutions described in clause
7 (iv) of section 19(b)(1)(A) of the Federal Reserve
8 Act; and

9 (3) part C of title V of the Farm Credit Act of
10 1971 (12 U.S.C. 2261 et seq.), by the Farm Credit
11 Administration in the case of an institution that is
12 a member of the Farm Credit System.

13 (b) ADDITIONAL ENFORCEMENT POWERS.—

14 (1) VIOLATION OF THIS ACT TREATED AS VIO-
15 LATION OF OTHER ACTS.—For purposes of the exer-
16 cise by any agency referred to in subsection (a) of
17 such agency's powers under any Act referred to in
18 such subsection, a violation of a requirement im-
19 posed under this Act shall be deemed to be a viola-
20 tion of a requirement imposed under that Act.

21 (2) ENFORCEMENT AUTHORITY UNDER OTHER
22 ACTS.—In addition to the powers of any agency re-
23 ferred to in subsection (a) under any provision of
24 law specifically referred to in such subsection, each
25 such agency may exercise, for purposes of enforcing

1 compliance with any requirement imposed under this
2 Act, any other authority conferred on such agency
3 by law.

4 (c) ENFORCEMENT AND REIMBURSEMENT.—In car-
5 rying out its enforcement activities under this section,
6 each agency referred to in subsection (a) shall—

7 (1) notify the mortgagee or servicer of any fail-
8 ure of the mortgagee or servicer to comply with 1
9 or more provisions of this Act;

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

15 (3) require the mortgagee or servicer, as appli-
16 cable, to reimburse the mortgagor in an amount
17 equal to the total unearned premiums paid by the
18 mortgagor after the date on which the obligation to
19 pay those premiums ceased under this Act.

20 **SEC. 11. CONSTRUCTION.**

21 Nothing in this Act shall be construed to impose any
22 requirement for private mortgage insurance in connection
23 with a residential mortgage transaction.

1 **SEC. 12. EFFECTIVE DATE.**

2 This Act, other than section 13, shall become effec-
3 tive 1 year after the date of enactment of this Act.

4 **SEC. 13. ABOLISHMENT OF THE THRIFT DEPOSITOR PRO-**
5 **TECTION OVERSIGHT BOARD.**

6 (a) **IN GENERAL.**—Effective at the end of the 3-
7 month period beginning on the date of enactment of this
8 Act, the Thrift Depositor Protection Oversight Board es-
9 tablished under section 21A of the Federal Home Loan
10 Bank Act (hereafter in this section referred to as the
11 “Oversight Board”) is hereby abolished.

12 (b) **DISPOSITION OF AFFAIRS.**—

13 (1) **POWER OF CHAIRPERSON.**—Effective on the
14 date of enactment of this Act, the Chairperson of
15 the Oversight Board (or the designee of the Chair-
16 person) may exercise on behalf of the Oversight
17 Board any power of the Oversight Board necessary
18 to settle and conclude the affairs of the Oversight
19 Board.

20 (2) **AVAILABILITY OF FUNDS.**—Funds available
21 to the Oversight Board shall be available to the
22 Chairperson of the Oversight Board to pay expenses
23 incurred in carrying out paragraph (1).

24 (c) **SAVINGS PROVISION.**—

25 (1) **EXISTING RIGHTS, DUTIES, AND OBLIGA-**
26 **TIONS NOT AFFECTED.**—No provision of this section

1 shall be construed as affecting the validity of any
2 right, duty, or obligation of the United States, the
3 Oversight Board, the Resolution Trust Corporation,
4 or any other person that—

5 (A) arises under or pursuant to the Fed-
6 eral Home Loan Bank Act, or any other provi-
7 sion of law applicable with respect to the Over-
8 sight Board; and

9 (B) existed on the day before the abolish-
10 ment of the Oversight Board in accordance with
11 subsection (a).

12 (2) CONTINUATION OF SUITS.—No action or
13 other proceeding commenced by or against the Over-
14 sight Board with respect to any function of the
15 Oversight Board shall abate by reason of the enact-
16 ment of this section.

17 (3) LIABILITIES.—

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

24 (B) NO SUBSTITUTION.—The Secretary of
25 the Treasury shall not be substituted for the

1 Oversight Board as a party to any action or
2 proceeding referred to in subparagraph (A).

3 (4) CONTINUATIONS OF ORDERS, RESOLUTIONS,
4 DETERMINATIONS, AND REGULATIONS PERTAINING
5 TO THE RESOLUTION FUNDING CORPORATION.—

6 (A) IN GENERAL.—All orders, resolutions,
7 determinations, and regulations regarding the
8 Resolution Funding Corporation shall continue
9 in effect according to the terms of such orders,
10 resolutions, determinations, and regulations
11 until modified, terminated, set aside, or super-
12 seded in accordance with applicable law if such
13 orders, resolutions, determinations, or regula-
14 tions—

15 (i) have been issued, made, and pre-
16 scribed, or allowed to become effective by
17 the Oversight Board, or by a court of com-
18 petent jurisdiction, in the performance of
19 functions transferred by this section; and

20 (ii) are in effect at the end of the 3-
21 month period beginning on the date of en-
22 actment of this section.

23 (B) ENFORCEABILITY OF ORDERS, RESO-
24 LUTIONS, DETERMINATIONS, AND REGULATIONS
25 BEFORE TRANSFER.—Before the effective date

1 of the transfer of the authority and duties of
2 the Resolution Funding Corporation to the Sec-
3 retary of the Treasury under subsection (d), all
4 orders, resolutions, determinations, and regula-
5 tions pertaining to the Resolution Funding Cor-
6 poration shall be enforceable by and against the
7 United States.

8 (C) ENFORCEABILITY OF ORDERS, RESO-
9 LUTIONS, DETERMINATIONS, AND REGULATIONS
10 AFTER TRANSFER.—On and after the effective
11 date of the transfer of the authority and duties
12 of the Resolution Funding Corporation to the
13 Secretary of the Treasury under subsection (d),
14 all orders, resolutions, determinations, and reg-
15 ulations pertaining to the Resolution Funding
16 Corporation shall be enforceable by and against
17 the Secretary of the Treasury.

18 (d) TRANSFER OF THRIFT DEPOSITOR PROTECTION
19 OVERSIGHT BOARD AUTHORITY AND DUTIES OF RESOLU-
20 TION FUNDING CORPORATION TO SECRETARY OF THE
21 TREASURY.—Effective at the end of the 3-month period
22 beginning on the date of enactment of this Act, the au-
23 thority and duties of the Oversight Board under sections
24 21A(a)(6)(I) and 21B of the Federal Home Loan Bank

1 Act are transferred to the Secretary of the Treasury (or
2 the designee of the Secretary).

3 (e) MEMBERSHIP OF THE AFFORDABLE HOUSING
4 ADVISORY BOARD.—Effective on the date of enactment of
5 this Act, section 14(b)(2) of the Resolution Trust Cor-
6 poration Completion Act (12 U.S.C. 1831q note) is
7 amended—

8 (1) by striking subparagraph (C); and
9 (2) by redesignating subparagraphs (D) and
10 (E) as subparagraphs (C) and (D), respectively.

11 (f) TIME OF MEETINGS OF THE AFFORDABLE HOUS-
12 ING ADVISORY BOARD.—

13 (1) IN GENERAL.—Section 14(b)(6)(A) of the
14 Resolution Trust Corporation Completion Act (12
15 U.S.C. 1831q note) is amended—

16 (A) by striking “4 times a year, or more
17 frequently if requested by the Thrift Depositor
18 Protection Oversight Board or” and inserting
19 “2 times a year or at the request of”; and

20 (B) by striking the second sentence.

21 (2) CLERICAL AMENDMENT.—Section
22 14(b)(6)(A) of the Resolution Trust Corporation
23 Completion Act (12 U.S.C. 1831q note) is amended,

1 in the subparagraph heading, by striking “AND LO-
2 CATION”.

Passed the Senate November 9, 1997.

Attest:

Secretary.

105TH CONGRESS
1ST SESSION

S. 318

AN ACT

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

S 318 ES—	2
S 318 ES—	3
S 318 ES—	4
S 318 ES—	5
S 318 ES—	6
S 318 ES—	7
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S 318 ES—	9
S 318 ES—	10
S 318 ES—	11
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S 318 ES—	13
S 318 ES—	14
S 318 ES—	15

S 318 ES—16
S 318 ES—17
S 318 ES—18
S 318 ES—19
S 318 ES—20