

Michigan, as its members prepare to celebrate 85 years of exemplary community service, charitable giving and volunteerism.

The Kiwanis Club of Bay City was chartered on January 27, 1917 as the fifth club in the Michigan District and the 38th internationally. The word "Kiwanis" is a Native American term meaning "self-expression" and the Kiwanis organization has always expressed itself as an active and vibrant community builder since its inception. The notion behind the Kiwanis is that a group of individuals devoted to leading and improving their community can achieve more than any one individual working alone.

Under the leadership of President Donna Tiernan and all officers past and present, the Kiwanis Club of Bay City has truly honored and epitomized the essence of their motto, "We Build," by time and again stepping up to the plate to serve the needs of our community. The club has consistently supported so many programs and projects in Bay County, including the River of Time event, the BaySail program, Special Olympics and the State Police Academy for high school students. Kiwanis of Bay City also supports the Salvation Army, sponsors 4-H Fair awards and hosts an annual Mothers Day event where members donate gifts for needy moms.

In addition, the club has illustrated its significant commitment to young people through a variety of programs, including sponsorship of a \$25,000 Kiwanis Scholarship Program through the Bay Area Community Foundation. One of the club's more enduring projects is its Kiwanis youth baseball team begun in 1932 in the American Legion League and continuing today through the Northeast Little League in Bay City. Such efforts in education and athletics go a long way toward attaining and maintaining the mental and physical well-being of young people throughout our community. Moreover, the volunteer spirit of Kiwanis should be commended and emulated as a benchmark for all who seek to donate their time and talent to the commonweal.

Mr. Speaker, I ask my colleagues to join me in congratulating the Kiwanis Club of Bay City for 85 years of success and in expressing gratitude for all that its members do for the greater community. I am confident the club will continue its efforts to serve others by building and expanding its network of men and women dedicated to improving the lives of all those around them.

MORTGAGE LOAN CONSUMER  
PROTECTION ACT

**HON. JOHN J. LaFALCE**

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

*Wednesday, May 22, 2002*

Mr. LaFALCE. Mr. Speaker, today, I will be introducing the "Mortgage Loan Consumer Protection Act." This legislation will complement a bill I introduced last year, the Predatory Lending Consumer Protection Act (H.R. 1051), as well as the proposal I outlined in my March 26th letter to the HUD Secretary to end abusive practices in conjunction with the use of yield spread premiums. Combined, these initiatives are designed to establish a pro-consumer benchmark for mortgage reform, either with respect to any possible HUD regulatory action, or to legislation that may be enacted by Congress.

For most Americans, obtaining a mortgage loan is the single biggest financial transaction of their life. Typically, mortgage loan closing costs total thousands of dollars, and the loan itself represents a commitment to repay hundreds of thousands of dollars.

The majority of mortgage lenders, brokers, and settlement service providers do a commendable job in helping borrowers through the mortgage loan process, and in providing a good mortgage product. Yet, by loan closing, too many borrowers conclude that the mortgage process is far too confusing than it needs to be. And, too many borrowers close mortgage loans without any clear sense of whether their fees and rates are truly competitive.

The basic Federal law governing mortgage loan settlements is the Real Estate Settlement Procedures Act, also known as RESPA, first enacted in 1974. The "Mortgage Loan Consumer Protection Act" being introduced today modernizes RESPA, in a manner designed to make the mortgage loan process more understandable, more fair, and more competitive.

This legislation would improve and update RESPA by: simplifying and improving the accuracy of mortgage loan disclosures; expanding protections against junk fees and unearned closing costs; enhancing escrow account protections; and creating critically needed enforcement provisions for existing RESPA requirements. A number of provisions in this bill are identical to or derived from recommendations made in a 1998 joint report by HUD and the Federal Reserve Board on reform of the mortgage loan process.

First, the bill simplifies and improves the accuracy of mortgage loan disclosures. A near universal complaint about the current HUD mortgage disclosure forms is that they are far too confusing. Section 2(b) of my legislation would address this problem by directing HUD to revise the HUD-1 Settlement Statement to clearly segregate and provide totals for the following three different types of costs that are paid at settlement: "Closing Costs" (defined as all costs necessary to obtain the loan), "Prepaid Costs" (such as prepaid interest and escrow items), and "All Other Costs Paid at Closing"—that is, everything else.

This would be a dramatic improvement over the current HUD-1 statement, which neither arranges items in a logical order, nor provides totals for these three key types of costs. A clear delineation and a single total for all Closing Costs would be particularly helpful to borrowers analyzing loans, e.g., for the purpose of evaluating whether or not to refinance.

Section 2(c) of the bill directs HUD to harmonize the terms and forms used in the HUD-1 Statement and the Good Faith Estimate (GFE). As a result, the same three types of costs and totals as provided in the HUD-1 would be presented in the GFE. More importantly, harmonization would allow borrowers to track costs throughout the loan process. This is a critical tool to help borrowers evaluate how actual costs compare to preliminary estimates, and to help borrowers hold service providers accountable with respect to any cost increases.

And, Section 2(a) revises the Truth In Lending Act (TILA) to improve the accuracy of the "Finance Charge" for the purpose of calculating the Annual Percentage Rate (APR) for a mortgage loan. Specifically, it requires that the APR calculation include all of the costs that

are required to be paid in order to obtain the loan. Currently, a number of charges are excluded by statute from the APR calculation for mortgage loans, an anomaly that creates a misleading APR calculation that was singled out for criticism in the 1998 HUD-Fed report. I would also note that with this change the Finance Charge would equal the sum of loan interest payments, plus "Closing Costs" as identified under Section 2(b) of my legislation.

Secondly, the bill would expand protections against unwarranted mortgage closing costs, including markups and junk fees. A common complaint by borrowers is that the final settlement statement is not made available until the borrower sits down at closing. Under current law, borrowers may request this statement one day prior to closing, but most borrowers are not even aware that this right exists. As a result, it is not uncommon for borrowers to discover additional fees and charges that they were not previously aware of until the very last minute. With pressures or even deadlines to close, the borrower often has no option but to complain, but ultimately accept, such costs, whether warranted or not.

Section 3 of my legislation addresses this problem by requiring lenders to make available the HUD-1 Settlement Statement at least 2 calendar days before closing. This gives borrowers an opportunity to challenge fees and charges, at a time in the process when they can be reasonably challenged. This is crafted in a flexible way that should not hold up loan closings.

Section 4 deals with the practice of markups of closing costs, also sometimes referred to as "upcharges." Section 8 of RESPA generally prohibits the payment or receipt of a portion or split of a settlement service charge other than for services rendered. Historically, HUD has interpreted this to apply to markups of third party services. However, a recent court case, *Echeverria v. Chicago Title & Trust Co.*, concluded that Section 8 does not apply in cases where the third party has no involvement in the unearned fee. In October, 2001, HUD responded by issuing a Policy Statement, "clarifying" that Section 8 does apply to markups.

Section 4 of my bill explicitly reaffirms the HUD position that Section 8 applies to markups of the cost of services provided by a separate service provider, even if that separate provider has no involvement in the markup. Section 4 goes further than the HUD Policy Statement, by amending Section 4 of RESPA to require that all fees collected by a lender be disclosed clearly on the HUD-1 as being collected by such lender. This provides additional protections against the practice of disguising markups by rolling them into one single disclosure item.

Section 4 of my bill also addresses the problem of junk fees. Specifically, it provides that Section 8 applies to fees collected by one settlement service provider where "no, nominal, or duplicative" work is done. In this context, duplicative refers to situations where a service provider is collecting a fee that is itemized separately from a fee charged for services by a third party—allegedly for the same type of service, but without any additional goods or services being provided. The purpose of the prohibition of charges where no services are provided is obvious; the inclusion of the phrase "nominal" in addition to "no" services is intended to circumvent a defense against a Section 8 violation that the service

provider is doing something—but where that something is of no real value to the borrower.

Finally, I would note that the October HUD Policy Statement also asserts that Section 8 applies to unearned fees where “the fee is in excess of the reasonable value of goods or facilities provided or the services actually performed.” A concern has been raised that such an open-ended application could potentially subject every settlement charge for every loan to a subjective determination of whether such a charge is excessive. The RESPA statute is not intended to be applied so broadly. Similarly, it is not the intent of Section 4 of my bill to subject charges where substantive services are provided by a single service provider to a test of merely whether they are excessive (provided there is no violation of 8(a) kickback or referral fee prohibitions).

Similarly, it is not the intent of Section 4 of my bill to apply the “no, nominal, or duplicative” test to commissions or fees charged by real estate brokers for services related to real estate sales, providing they are negotiated up-front in writing between a broker and the seller (or buyer), and provided that there is no violation of 8(a) kickback or referral fee prohibitions. The purpose of Section 4 of my bill with regard to charges by a single settlement provider is intended to address fees that are part of the mortgage loan process; thus, real estate fees agreed to voluntarily and explicitly by a seller months prior to a mortgage loan being made should not be subject to Section 8 RESPA scrutiny, providing there is no kickback or referral, and the fee is not increased above the agreed-upon amount.

Third, my bill strengthens consumer protections with respect to the administration of escrow accounts, which are commonly required by lenders for the payment of taxes and insurance. Section 6 makes loan servicers liable for fees and penalties arising from their failure to make timely payment of taxes, insurance premiums, and other charges. It also prohibits a servicer from profiting from the failure to make timely payment of insurance charges, by prohibiting such servicer from collecting any fees associated with force-placed hazard insurance.

And, Section 6 deals with the timely return of escrow funds upon loan repayment. As the HUD-Fed report noted, current law does not require return of such funds; it merely requires a final statement be sent out within 60 days of

loan payoff. This can be a particular hardship for certain borrowers, especially those who are refinancing or buying a different home.

When a loan is prepaid in full, the borrower pays the lender all outstanding principal and interest. Accordingly, it is not unreasonable to ask the lender to return all escrow funds at the same time, e.g., as an offset. Therefore, Section 8 of my bill requires the lender to return all escrow funds at time of loan repayment, provided the borrower gives 7 calendar days notice of such intent to prepay. If notice is not given, the servicer must return escrow funds within 21 days. Monetary damages are provided for failure to comply with this requirement.

Fourth, the bill beefs up enforcement provisions. The HUD-Fed report noted that requirements relating to the Good Faith Estimate and the HUD-1 Settlement Statement are “not supported by any enforcement authority under RESPA.” Thus, while the details and scope of what enforcement provisions should be established is a matter for honest debate, it seems clear that the current lack of any enforcement mechanism is unacceptable.

Therefore, Section 7 provides for a uniform enforcement provision that would apply to violations of Section 4 (HUD-1 Settlement Statement), Section 5 (Good Faith Estimate), Section 6 (loan servicing disclosure requirements), and Section 10 (Escrow Account Statements). Settlement service providers that violate these sections would be liable for actual damages, plus additional damages as the court may award, up to \$2,000 per loan, plus court costs in the case of successful legal action. In addition, this section provides for a uniform statute of limitations of three years for all enforcement actions.

Finally, Section 5 of the bill directs HUD to expand the Special Information Booklet required to be given to borrowers at the same time the Good Faith Estimate is provided, to include assistance in two common situations faced by borrowers. First, HUD is required to include an explanation of the issues involved in refinancing a mortgage loan, including the tradeoffs of lower interest rates and closing costs. Secondly, HUD is required to include an explanation that some lenders may offer the option that some loan fees may be paid up front, or in the form of a higher mortgage rate, including assistance in evaluating this type of option.

The “Mortgage Loan Consumer Protection Act” represents a balanced, common-sense approach to beef up consumer protections in our mortgage disclosure laws. I urge its consideration and adoption.

RECOGNIZING JESSE J. WUKIE ON HIS APPOINTMENT TO THE U.S. AIR FORCE ACADEMY

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, May 22, 2002

Mr. GILLMOR. Mr. Speaker, it is with great pride that I rise today to recognize my constituent, Jesse J. Wukie of Fremont, Ohio, who recently accepted his appointment to the U.S. Air Force Academy.

Jesse will soon graduate from Fremont Ross High School. During his high school career, he has maintained a high grade point average and was named to the honor roll. He is an accomplished athlete, earning varsity letters in wrestling. And, he has clearly demonstrated his leadership ability, serving as captain of the wrestling team, and as Vice President of his 4-H Horse Club.

Jesse Wukie can be very proud of his many accomplishments. He is a credit to his family, his school, and his community. By accepting his appointment, Jesse is accepting a unique challenge.

The Academy is the pinnacle of leadership development for the United States Air Force. As a member of the Cadet Air Wing, he will face a most demanding academic curriculum and physical regimen. He will live, study and prepare in an environment where strong leadership thrives, individual achievement is expected, and personal integrity is demanded.

Mr. Speaker, General John W. Vessey, Jr. once wrote, “The Nation’s ability to remain free and at peace depends in no small measure on whether we will continue to inspire our youth to serve.”

I am confident that Jesse Wukie has the character and ability to excel at the U.S. Air Force Academy. I ask my colleagues to join me in wishing him well as he begins his very important service to our Nation.