

112TH CONGRESS
1ST SESSION

H. R. 1567

To amend the Real Estate Settlement Procedures Act of 1974 to require mortgagees for mortgages in default to engage in reasonable loss mitigation activities, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

APRIL 14, 2011

Ms. WATERS introduced the following bill; which was referred to the
Committee on Financial Services

A BILL

To amend the Real Estate Settlement Procedures Act of 1974 to require mortgagees for mortgages in default to engage in reasonable loss mitigation activities, 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.**

4 This Act may be cited as the “Foreclosure Prevention
5 and Sound Mortgage Servicing Act of 2011”.

1 **SEC. 2. DUTY TO ENGAGE IN LOSS MITIGATION.**

2 (a) DUTY.—The Real Estate Settlement Procedures
3 Act of 1974 is amended by inserting after section 6 (12
4 U.S.C. 2605) the following new section:

5 **“SEC. 6A. DUTY TO ENGAGE IN LOSS MITIGATION.**

6 “(a) DUTY FOR COVERED FEDERALLY RELATED
7 MORTGAGE LOANS.—

8 “(1) DUTY.—Upon default of any federally re-
9 lated mortgage loan that is secured by a lien on the
10 principal residence of the borrower or mortgagor,
11 the mortgagee shall engage in reasonable loss miti-
12 gation activities that provide for—

13 “(A) the long-term affordability of the
14 loan; and

15 “(B) the maximum retention of home eq-
16 uity.

17 “(2) RESPONSIBILITIES BY LIENHOLDERS.—
18 With respect to a default referred to in paragraph
19 (1):

20 “(A) SENIOR LIEN.—The mortgagee of the
21 senior lien on the residence shall have primary
22 responsibility for the loss mitigation activities
23 required under such paragraph.

24 “(B) SUBORDINATE LIENS.—The mort-
25 gagee of any subordinate lien shall refrain from
26 interfering with or inhibiting the modification of

1 the senior lien and shall comply with the rules
2 prescribed in subsection (g) to modify the sub-
3 ordinate lien.

4 “(b) NO FORECLOSURE WITHOUT LOSS MITIGA-
5 TION.—

6 “(1) PROHIBITION.—No foreclosure of any cov-
7 ered federally related mortgage loan shall be initi-
8 ated, continued, or completed if the mortgagee or
9 servicer has at any time failed to comply with the re-
10 quirements of this section with respect to such loan.

11 “(2) CERTIFICATION OF LOSS MITIGATION AC-
12 TIVITIES.—

13 “(A) PRECONDITION TO SALE.—The filing
14 of a certification of loss mitigation activities
15 with respect to a covered federally related mort-
16 gage loan shall be a condition precedent—

17 “(i) to any valid sale pursuant to fore-
18 closure of the principal residence that is
19 subject the lien securing the loan; and

20 “(ii) to the filing of any action to re-
21 cover possession of the residence by the
22 purchaser at such a sale.

23 “(B) FILING.—In the case of a residence
24 that is subject to a lien securing a covered fed-
25 erally related mortgage loan, after foreclosure

1 on such loan, the State or local government of-
2 ficial responsible for recording deeds and other
3 transfers of real property in the jurisdiction in
4 which the residence is located shall not record,
5 nor permit the recordation of, any deed trans-
6 ferring title to such residence unless such offi-
7 cial certifies that—

8 “(i) that this section does not apply to
9 such federally related mortgage loan; or

10 “(ii) the party conducting the sale or
11 transfer has demonstrated that the re-
12 quirements of this section have been met.

13 “(C) FORM AND CONTENT.—The Director
14 of the Bureau of Consumer Financial Protec-
15 tion of the Federal Reserve System shall, by
16 regulation, provide for the form and content of
17 a certification pursuant to this paragraph.

18 “(3) VOIDANCE OF SALE.—Notwithstanding
19 any other provision of Federal or State law or any
20 contract, a sale or other transfer of property in vio-
21 lation of this subsection shall be null and void.

22 “(c) LOSS MITIGATION ACTIVITIES.—

23 “(1) IN GENERAL.—For purposes of this sec-
24 tion, loss mitigation activities shall include—

1 “(A) priority loss mitigation activities
2 under paragraph (5);

3 “(B) secondary loss mitigation activities
4 under paragraph (6); and

5 “(C) last-resort loss mitigation activities
6 under paragraph (7).

7 “(2) ORDER OF PURSUIT.—In complying with
8 subsection (a), the mortgagee or servicer shall pur-
9 sue loss mitigation activities in the following order:
10 first priority loss mitigation activities, then sec-
11 ondary loss mitigation activities, and then last-resort
12 loss mitigation activities. If any loss mitigation activ-
13 ity is taken, the mortgagee or servicer shall provide
14 written notice of such activity to the borrower or
15 mortgagor by mail not later than 7 business days
16 after such action is taken.

17 “(3) CONSIDERATION OF CIRCUMSTANCES IN
18 PROVISION OF LOSS MITIGATION ACTIVITIES.—

19 “(A) DETERMINATION.—In determining
20 the type of loss mitigation activity to provide
21 with respect to a covered federally related mort-
22 gage loan, the mortgagee or servicer shall con-
23 sider the nature of the financial hardship expe-
24 rienced by the borrower or mortgagor and
25 whether such hardship is a temporary hardship.

1 The Director shall, by regulation, define ‘hard-
2 ship’ and ‘temporary hardship’ for purposes of
3 this subsection.

4 “(B) ACTIONS BASED ON CIR-
5 CUMSTANCES.—The mortgagee or servicer shall
6 provide—

7 “(i) priority loss mitigation activities
8 with respect to borrowers and mortga-
9 gees—

10 “(I) who cannot make scheduled
11 payments due under the loan or other
12 payments due to financial hardship;
13 and

14 “(II) for whom providing such
15 loss mitigation activities are con-
16 sistent with maximizing net present
17 value of the loan (as determined in ac-
18 cordance with subsection (d)(4));

19 “(ii) secondary loss mitigation activi-
20 ties with respect to borrowers or mortga-
21 gors who have experienced a change in
22 their financial condition that has resulted
23 in temporary financial hardship; and

24 “(iii) last-resort loss mitigation activi-
25 ties with respect to borrowers or mortga-

1 gors who, notwithstanding priority or sec-
2 ondary loss mitigation activities taken with
3 respect to the mortgage, will be unable to
4 make payments due under the loan.

5 “(4) PROHIBITIONS.—A mortgagee or servicer
6 with respect to a covered federally related mortgage
7 loan—

8 “(A) may not limit the number of loss
9 mitigation activities provided with respect to a
10 borrower or mortgagor if such activities are
11 provided in connection with financial hardships
12 of differing natures, but may limit the number
13 of loss mitigation activities provided with re-
14 spect to a borrower or mortgagor pursuant to
15 recurring financial hardships of the same na-
16 ture;

17 “(B) shall comply with the requirements of
18 under this section with respect to the loan with-
19 out regard to whether there has been a previous
20 default under the loan; and

21 “(C) initiate foreclosure proceedings while
22 simultaneously providing loss mitigation activi-
23 ties to a borrower or mortgagor; and

24 “(D) assess fees for the provision of loss
25 mitigation services, notwithstanding the fees

1 permitted under section 128B of the Truth in
2 Lending Act.

3 “(5) PRIORITY LOSS MITIGATION ACTIVITIES.—

4 For purposes of this section, the term ‘priority loss
5 mitigation activities’ includes, with respect to a cov-
6 ered federally related mortgage loan, activities that
7 preserve the borrower’s or mortgagor’s ownership in-
8 terest in the property that is subject to the lien se-
9 curing the loan by modifying the contractual terms
10 of the loan. Priority loss mitigation activities include
11 modification of the loan terms that provide for the
12 following:

13 “(A) ALTERATION OF TERMS.—Reduction
14 of the interest rate of the loan, forgiveness of
15 loan principal or interest, conversion from an
16 adjustable rate mortgage to a fixed rate mort-
17 gage, and reamortization of the loan in connec-
18 tion with an extension of the final maturity
19 date of the loan such that the total term of the
20 loan does not exceed 40 years.

21 “(B) SHORT REFINANCING.—Short refi-
22 nancing of the loan consisting of acceptance of
23 payment from or on behalf of the borrower or
24 mortgagor of an amount that is less than the
25 full amount alleged to be due and owing under

1 the loan, including principal, interest, and fees,
2 in full satisfaction of the obligation under the
3 loan and as part of a refinance transaction
4 under which the property that is subject to the
5 lien securing the loan is intended to remain the
6 principal residence of the borrower or mort-
7 gagor.

8 In the case of priority loss mitigation activities, the
9 mortgagee or servicer shall waive any late payment
10 charge, penalty interest, or any other fees or
11 charges, including legal fees, or any combination
12 thereof, that would otherwise apply to the loan.

13 “(6) SECONDARY LOSS MITIGATION ACTIVI-
14 TIES.—For purposes of this section, the term ‘sec-
15 ondary loss mitigation activities’ includes, with re-
16 spect to a covered federally related mortgage loan,
17 other activities that avoid foreclosure and preserve
18 the borrower’s or mortgagor’s ownership interest in
19 the property that is subject to the lien securing the
20 loan, but do not change the contractual terms of the
21 loan. Secondary loss mitigation activities include the
22 following activities:

23 “(A) Waiver of any late payment charge,
24 penalty interest, or any other fees or charges,
25 including legal fees, or any combination thereof.

1 “(B) Establishment of a repayment plan
2 under which the borrower or mortgagor re-
3 sumes regularly scheduled payments and pays
4 additional amounts at scheduled intervals to
5 cure the delinquency.

6 “(C) Forbearance under the loan that pro-
7 vides for a temporary reduction in, or cessation
8 of, monthly payments followed by a reamortiza-
9 tion of the amounts due under the loan, includ-
10 ing arrearage, and a new schedule of repayment
11 amounts.

12 “(7) LAST-RESORT LOSS MITIGATION ACTIVI-
13 TIES.—For purposes of this section, the term ‘last-
14 resort loss mitigation activities’ includes, with re-
15 spect to a covered federally related mortgage loan,
16 activities that avoid foreclosure but do not preserve
17 the borrower’s or mortgagor’s ownership interest in
18 the property that is subject to the lien securing the
19 loan. Last-resort loss mitigation activities include
20 the following activities:

21 “(A) Short sale of the principal residence
22 that is subject to the lien securing the loan,
23 consisting of acceptance of payment from or on
24 behalf of the borrower or mortgagor of an
25 amount less than the amount alleged to be due

1 and owing under the loan, including principal,
2 interest, and fees, in full satisfaction of the obli-
3 gation under such loan and as part of a sale
4 transaction in which the property is not in-
5 tended to remain the principal residence of the
6 borrower or mortgagor.

7 “(B) Assumption of the borrower’s obliga-
8 tions under the loan by a third party.

9 “(C) Cancellation or postponement of a
10 foreclosure sale to allow the borrower or mort-
11 gagor additional time to sell the property.

12 “(D) Acquisition of the property by the
13 mortgagee or servicer by deed in lieu of fore-
14 closure.

15 “(8) LIMITATIONS ON LOSS MITIGATION.—

16 “(A) ANNUAL CERTIFICATIONS OF IN-
17 COME.—A borrower or mortgagor under a cov-
18 ered federally related mortgage loan who has
19 received loss mitigation activities provided
20 under this section shall annually provide a cer-
21 tification of the income of such borrower or
22 mortgagor to the servicer or mortgagee of the
23 loan. The servicer or mortgagee under the loan
24 may increase the monthly payment due under
25 the loan from the borrower or mortgagee if

1 such certification reveals that the income of
2 such borrower or mortgagee has increased, ex-
3 cept such increase in payment due may not ex-
4 ceed an amount that is commensurate with
5 such increase in income.

6 “(B) NO OBLIGATION TO MODIFY FRAUDU-
7 LENT LOANS.—Subsections (a) and (b) shall
8 not apply with respect to a covered federally re-
9 lated mortgage loan if the borrower or mort-
10 gator under the loan committed fraud by pro-
11 viding false or misleading information in con-
12 nection with the loss mitigation activities for
13 the loan. This subparagraph may not be con-
14 strued to exempt subsections (a) and (b) from
15 applying to any loan because of any fraud com-
16 mitted by the originator of the loan during the
17 application and approval process for the loan.

18 “(d) AFFORDABLE PAYMENTS.—

19 “(1) CONSIDERATION IN REASONABILITY OF
20 LOSS MITIGATION ACTIVITIES.—The affordability of
21 any scheduled payments due from the borrower or
22 mortgagor under a covered federally related mort-
23 gage loan pursuant to loss mitigation activities for
24 the loan and whether the activities are in the best
25 financial interests of the borrower or mortgagor

1 shall be taken into consideration in determining
2 whether a mortgagee has engaged, for purposes of
3 subsection (a)(1), in reasonable loss mitigation ac-
4 tivities that provide for long-term affordability of the
5 loan.

6 “(2) AFFORDABILITY.—

7 “(A) IN GENERAL.—Payments under a
8 loan shall be considered to be affordable for a
9 borrower or mortgagor for purposes of this sub-
10 section if such payments do not cause the total
11 monthly debts of the borrower or mortgagor, in-
12 cluding amounts due under the loan, to ex-
13 ceed—

14 “(i) a percentage established by the
15 Director, by regulation, of the monthly
16 gross income of the borrower or mort-
17 gagor; or

18 “(ii) such other maximum percentage
19 of such income as the Director may estab-
20 lish, by regulation, which regulations shall
21 take into consideration the amount of in-
22 come of the borrower or mortgagor avail-
23 able to pay regular expenses after payment
24 of all installment and revolving debt.

1 “(B) UNDERWATER LOANS.—Notwith-
2 standing subparagraph (A), payments under a
3 loan having a loan-to-value ratio that exceeds
4 100 percent shall not be considered to be af-
5 fordable for a borrower or mortgagor for pur-
6 poses of this subsection unless the amount of
7 the remaining principal balance on such loan
8 that exceeds 100 percent is reduced.

9 “(3) INCOME USED IN DETERMINING AFFORD-
10 ABILITY.—

11 “(A) DOCUMENTATION.—A mortgagee or
12 servicer shall request documentation of the in-
13 come of a borrower or mortgagor before com-
14 mencing loss mitigation activities.

15 “(B) VERIFICATION.—The borrower’s or
16 mortgagor’s income shall be verified by—

17 “(i) the Federal wage and tax state-
18 ment (Form W-2 of the Internal Revenue
19 Service) of the borrower or mortgagor; or

20 “(ii) tax returns, payroll receipts, fi-
21 nancial institution records, or other third-
22 party documents that provide reasonably
23 reliable evidence of the income or assets of
24 the borrower or mortgagor.

25 “(4) STANDARD NET PRESENT VALUE TEST.—

1 “(A) TEST.—Upon the request of a bor-
2 rower or mortgagor under a covered federally
3 related mortgage loan who is qualified for loss
4 mitigation activities under this section, the
5 mortgagee or servicer under the loan shall per-
6 form a standard test to compare the expected
7 net present value of modifying the loan to the
8 net present value of foreclosing on such loan.

9 “(B) EFFECT.—If application of the
10 standard test referred to in subparagraph (A)
11 to a covered federally related mortgage loan
12 shows that the net present value, to the mort-
13 gagee or in the aggregate, of modifying the loan
14 exceeds the net present value of foreclosing on
15 the loan, all persons that hold an interest in the
16 mortgage agreement shall agree to modify such
17 loan in a manner as the Bureau has prescribed.

18 “(C) COMPONENTS.—The Director shall,
19 by regulation, establish the components of the
20 standard test for purposes of subparagraph (A),
21 which shall not—

22 “(i) prohibit the modification of nega-
23 tively amortizing loans;

24 “(ii) prohibit the modification of loans
25 with negative equity; or

1 “(iii) prohibit the modification of
2 loans to minority and low-income bor-
3 rowers or mortgagors.

4 “(5) DEBT-TO-INCOME RATIO.—In determining
5 the debt-to-income ratio or residual income of a
6 mortgagor or borrower under a covered federally re-
7 lated mortgage loan for purposes of this subsection,
8 the amount of monthly payment under the loan shall
9 include principal, interest, taxes, insurance, flood in-
10 surance, any homeowner’s association and condo-
11 minium fees, and any second or subordinate liens.

12 “(6) MONTHLY INCOME.—In determining
13 monthly income of a mortgagor or borrower for pur-
14 poses of this subsection, all wages, salary, overtime,
15 fees, commissions, tips, Social Security benefits, pen-
16 sions, and all other income shall be considered.

17 “(7) WRITTEN NOTIFICATION OF AFFORD-
18 ABILITY CALCULATION.—The mortgagee or servicer
19 shall notify the borrower or mortgagor in writing of
20 the results of the determination of affordability
21 under this subsection and the income on which the
22 determination was based. Such written notice shall
23 be provided by mail not later than 7 business days
24 after such action is taken or as part of the written

1 notice required under subsection (c)(2), whichever is
2 earlier.

3 “(e) EXPLANATION OF DENIAL.—A mortgagee or
4 servicer under a covered federally related mortgage loan
5 shall provide, to each borrower or mortgagor who has re-
6 quested loss mitigation activities under this section and
7 been denied the provision of such activities by the mort-
8 gagee or servicer, an explanation of why such activities
9 were denied and the eligibility standards used by such
10 mortgagee or servicer in assessing the provision of loss
11 mitigation activities.

12 “(f) PRESUMPTION OF COMPLIANCE.—An offer,
13 made by a mortgagee or servicer under a covered federally
14 related mortgage loan to a borrower or mortgagor, of a
15 priority loss mitigation alternative that is in compliance
16 with the requirements under subsection (d) (relating to
17 affordable payments) and any regulations carrying out
18 such subsection shall be presumed to constitute compli-
19 ance with the requirement to perform reasonable loss miti-
20 gation under subsection (a) with respect to the loan.

21 “(g) SUBORDINATE LIENS.—

22 “(1) INFORMATION SHARING.—Each mortgagee
23 with respect to a subordinate lien shall provide to
24 any mortgagee holding a senior lien under a covered
25 federally related mortgage loan information needed

1 by such senior mortgagees to engage in reasonable
2 loss mitigation as required by this section with re-
3 spect.

4 “(2) MAINTENANCE OF LIEN STATUS.—Any
5 priority loss mitigation activity under subsection
6 (c)(5) undertaken with respect to a senior lien as
7 part of loss mitigation activity shall not impair the
8 priority status of liens under the modified loan, to
9 the extent that there are no additional funds ad-
10 vanced to the borrower in connection with such pri-
11 ority loss mitigation activity.

12 “(3) AUTOMATIC MODIFICATION UPON MODI-
13 FICATION OF SENIOR LIEN.—Upon the provision of
14 loss mitigation activities in accordance with this Act
15 by the holder of a senior lien, a mortgagee with re-
16 spect to a subordinate lien shall modify such lien in
17 proportion to the modification of the senior lien.

18 “(4) UNDERWATER SUBORDINATE LIENS.—If
19 the combined loan-to-value ratio under the covered
20 federally related mortgage loan secured by the senior
21 lien and any loans secured by subordinate liens ex-
22 ceeds 100 percent, the mortgagee of each such sub-
23 ordinate lien shall perform one or more of the fol-
24 lowing actions:

1 “(A) Reduce the principal amount on such
2 lien to an amount that results in a total loan-
3 to-value ratio of not more than 100 percent
4 when combined with the primary lien.

5 “(B) Release the residential real property
6 that is subject to such subordinate lien from the
7 subordinate lien.

8 “(h) DIRECT ACCESS TO AUTHORIZED LOSS MITIGA-
9 TION PERSONNEL.—

10 “(1) PROVISION OF CONTACT INFORMATION.—

11 The mortgagee or servicer of a covered federally re-
12 lated mortgage loan shall provide, on each regular
13 account statement for the loan, a toll-free or collect-
14 call telephone number that provides the borrower
15 with direct access to a person with the information
16 and authority to answer questions and fully resolve
17 issues related to loss mitigation activities for the
18 loan.

19 “(2) REQUIREMENT OF SINGLE POINT OF CON-
20 TACT.—

21 “(A) REQUIREMENT.—For any borrower
22 or mortgagor that contacts a mortgagee or
23 servicer through the telephone number provided
24 pursuant to paragraph (1) or through any other
25 means, the mortgagee or servicer shall assign to

1 such borrower or mortgagor a single point of
2 contact that will personally and primarily assist
3 such borrower or mortgagor with the resolution
4 or implementation of loss mitigation activities
5 requested by such borrower or mortgagor.

6 “(B) DEFINITION.—For purposes of this
7 paragraph the term ‘single point of contact’
8 means an individual employed by a servicer
9 with specialized training in loss mitigation and
10 customer service who serves as the primary
11 point of contact for any negotiations, questions,
12 or other informational needs a for borrower or
13 mortgagor who has requested loss mitigation.

14 “(3) PROHIBITION ON OUTSOURCING.—In car-
15 rying out subsection (a) with respect to a covered
16 federally related mortgage loan, any contact by or on
17 behalf of a mortgagee or servicer with the home-
18 owner and any processing of any loss mitigation ac-
19 tivities shall be conducted only by agents of the
20 mortgagee or servicer who are physically located in
21 the United States.

22 “(i) THIRD-PARTY LOAN MODIFICATIONS.—The
23 mortgagee or servicer of a covered federally related mort-
24 gage loan shall not accept or provide loss mitigation activi-

1 ties with respect to such loan at the request of any entity
2 or individual that is not party to the loan unless—

3 “(1) the entity or individual is authorized by
4 the borrower or mortgagee to act on behalf of the
5 borrower or mortgagor; and

6 “(2)(A) is a representative of a housing coun-
7 seling agency approved by the Secretary of Housing
8 and Urban Development; or

9 “(B) provides documentation to the servicer or
10 mortgagee that the entity or individual—

11 “(i) has not charged any fee to the bor-
12 rower or mortgagor for such request; or

13 “(ii)(I) has charged a nominal fee for such
14 request;

15 “(II) has entered into a written contract,
16 in plain English or the primary language of the
17 borrower or mortgagor, with the borrower or
18 mortgagor, that includes provisions for cancella-
19 tion without penalty; and

20 “(III) will refund any such fees to the bor-
21 rower or mortgagor in the event the request for
22 loss mitigation is denied.

23 “(j) DUTY TO REFER TO HUD-CERTIFIED HOUSING
24 COUNSELING AGENCY.—

1 “(1) REFERRAL BY SERVICER OR MORT-
2 GAGEE.—In the case of any payment due under a
3 covered federally related mortgage loan that is more
4 than 60 days late, the servicer or mortgagee shall
5 forward to a housing counseling agency approved by
6 the Secretary of Housing and Urban Development
7 the contact information of the borrower.

8 “(2) EXPRESSION OF BORROWER PREF-
9 ERENCE.—The borrower may communicate to the
10 servicer or mortgagee a preference for a particular
11 housing counseling agency approved by the Sec-
12 retary of Housing and Urban Development—

13 “(A) in writing at the time of closing on
14 the loan; or

15 “(B) in writing at any time during the
16 term of the loan, including by conveyance of
17 signed authorization form from the approved
18 housing counseling agency of the borrower’s
19 choice, which shall be transmitted by such agen-
20 cy to the mortgagee or servicer.

21 “(3) REFERRAL RELATIONSHIP.—A mortgagee
22 or servicer may establish a referral relationship with
23 a housing counseling agency approved by the Sec-
24 retary of Housing and Urban Development, but such
25 relationship may not be exclusive and the mortgagee

1 or servicer may not refuse to respond to qualified
2 written requests and other communications from an-
3 other housing counseling agency approved by the
4 Secretary of Housing and Urban Development or
5 any other agent that is authorized by the borrower.

6 “(k) PROHIBITION ON WAIVER OF RIGHTS.—A mort-
7 gagee for a covered federally related mortgage loan may
8 not—

9 “(1) when engaging in loss mitigation activities
10 pursuant to subsection (a), require a borrower to
11 limit or waive the rights of such borrower to bring
12 any claims, defenses, demands, proceedings, actions,
13 or causes of action against the mortgagee or servicer
14 as a condition of accepting an offer of any loss miti-
15 gation activities, including any activities under sub-
16 section (c); or

17 “(2) require the borrower to agree to arbitra-
18 tion as a condition of receiving loan modification ac-
19 tivities.

20 Any waiver or arbitration provision in a written agreement
21 prohibited under this subsection shall be void and unen-
22 forceable.

23 “(l) SHORT SALE AND DEED-IN-LIEU OF FORE-
24 CLOSURE PROTECTIONS.—

1 “(1) RIGHT TO SELL.—If a borrower or mort-
2 gagor under a covered federally related mortgage
3 loan presents documentation to the mortgagee or
4 servicer of such loan an objective circumstance
5 under paragraph (2) that supports a request of the
6 borrower or mortgagor for the immediate sale of the
7 property subject to the loan, the mortgagee or
8 servicer shall not prevent or otherwise interfere with
9 the borrower or mortgagor from selling the property
10 subject to such loan for an amount that is less than
11 the amount owed to such mortgagee or servicer.

12 “(2) OBJECTIVE CIRCUMSTANCE.—Only the fol-
13 lowing objective circumstances may be considered by
14 the mortgagee or servicer, for purposes of paragraph
15 (1), in determining whether an immediate sale of the
16 property subject to the loan is required:

17 “(A) A member of the household of the
18 borrower or mortgagor has obtained a new job.

19 “(B) A member of the household of the
20 borrower or mortgagor is attending a new
21 school.

22 “(C) The health and well-being of a mem-
23 ber of the household of the borrower or mort-
24 gagor.

1 “(3) PROHIBITION ON DEMAND PAYMENTS.—In
2 any case in which an immediate sale of a property
3 is determined under paragraph (1) to be required,
4 the mortgagee or servicer for the covered federally
5 related mortgage loan, or any agent thereof, shall
6 not demand an additional payment from the bor-
7 rower or mortgagor, or any agent thereof, or a po-
8 tential purchaser of the property as a condition of
9 allowing the sale of the property to occur.

10 “(4) RIGHT TO RECAPTURE.—This Act may not
11 be construed to prevent, in the case of any imme-
12 diate sale pursuant to paragraph (1), a mortgagee
13 or servicer from recovering after such sale from the
14 mortgagee or borrower, to the extent provided under
15 State law, the difference between the amount owed
16 under the covered federally related mortgage loan
17 and the sale price of the property.

18 “(m) REPORTING ON LOSS MITIGATION ACTIVI-
19 TIES.—

20 “(1) IN GENERAL.—Each mortgagee or servicer
21 of a covered federally related mortgage loan shall re-
22 port monthly and comprehensively to the Comp-
23 troller of the Currency, the Director, and the Board
24 of Governors of the Federal Reserve System on the
25 extent and scope of the loss mitigation activities of

1 the mortgagee. Each such report shall include data
2 on loss mitigation activities disaggregated according
3 to the categories specified in each of the subpara-
4 graphs of paragraphs (5), (6), and (7) of subsection
5 (c), any loss mitigation activities not covered by such
6 categories, the number of loans receiving loss mitiga-
7 tion that have become performing loans, the number
8 of loans receiving loss mitigation that have pro-
9 ceeded to foreclosure, the total number of fore-
10 closures initiated during the reporting period, and
11 such other information as the Comptroller, the Di-
12 rector, or the Board of Governors determines to be
13 relevant.

14 “(2) COMPILATION OF AGGREGATE DATA.—

15 “(A) COMMENCEMENT.—Beginning with
16 data for calendar year 2012, the Comptroller of
17 the Currency shall, in consultation with the Di-
18 rector and the Chairman of the Board of Gov-
19 ernors of the Federal Reserve System, compile
20 for each year, for each primary metropolitan
21 statistical area, metropolitan statistical area,
22 and consolidated metropolitan statistical area
23 that is not comprised of designated primary
24 metropolitan statistical areas, aggregate data
25 by census tract for each mortgagee or servicer

1 that is required to disclose data under this sub-
2 section.

3 “(B) SCOPE.—Each such report shall in-
4 clude loan-level disclosures of outstanding loans
5 with information related to—

6 “(i) the location of the security prop-
7 erty;

8 “(ii) the loan amount;

9 “(iii) the value of such security prop-
10 erty;

11 “(iv) the age of borrower or mort-
12 gagee;

13 “(v) the date on which such loan was
14 originated;

15 “(vi) the type of entity owning such
16 loan;

17 “(vii) the performance status of such
18 loan;

19 “(viii) the monetary losses incurred by
20 the investor in such loan in connection
21 with the termination of such loan;

22 “(ix) the loss mitigation activities pro-
23 vided in reference to such loan according
24 to the categories specified in each of the

1 subparagraphs of paragraphs (5), (6), and
2 (7) of subsection (c);

3 “(x) the loss mitigation activities pro-
4 vided in reference to such loan that are not
5 covered by such categories;

6 “(xi) the magnitude of such modifica-
7 tion or loss mitigation activities;

8 “(xii) the dates of consideration, ap-
9 proval, or rejection of such loss mitigation
10 activities;

11 “(xiii) the reasons for such rejection;

12 and

13 “(xiv) any other relevant information.

14 Such reports shall also include information
15 identical to that required upon loan origination
16 by the Home Mortgage Disclosure Act of 1975.

17 “(C) DATA TABLES.—The Comptroller, in
18 consultation with the Director and the Chair-
19 man of the Board of Governors of the Federal
20 Reserve System, shall also produce tables indi-
21 cating for each primary metropolitan statistical
22 area, metropolitan statistical area, and consoli-
23 dated metropolitan statistical area that is not
24 comprised of designated primary metropolitan
25 statistical areas, aggregate loss mitigation pat-

1 terms for various categories of census tracts
2 grouped according to location, age of housing
3 stock, income level, and racial and ethnic char-
4 acteristics.

5 “(D) AVAILABILITY TO PUBLIC.—The data
6 and tables required pursuant to this paragraph
7 shall be made available to the public not later
8 than 6 months after such data is reported pur-
9 suant to subparagraph (A).

10 “(n) DEFINITIONS.—For purposes of this section, the
11 following definitions shall apply:

12 “(1) COVERED FEDERALLY RELATED MORT-
13 GAGE LOAN.—The term ‘covered federally related
14 mortgage loan’ means a federally related mortgage
15 loan described in subsection (a).

16 “(2) DIRECTOR.—The term ‘Director’ means
17 the Director of the Bureau of Consumer Financial
18 Protection of the Federal Reserve System.

19 “(3) MORTGAGEE.—The term ‘mortgagee’
20 means, with respect to a federally related mortgage
21 loan, the original lender under the loan and any af-
22 filiates, agents, subsidiaries, successors, or assignees
23 of such lender, and any subsequent purchaser, trust-
24 ee, or transferee of the loan or credit instrument
25 issued by such lender.

1 “(4) SERVICER.—The term ‘servicer’ has the
2 meaning given such term in section 6(i).

3 “(5) SUBORDINATE LIEN.—The term ‘subordi-
4 nate lien’ means, with respect to a covered federally
5 related mortgage loan, a lien that—

6 “(A) is an interest on the same property
7 that is subject to the lien that secures the cov-
8 ered federally related mortgage loan; and

9 “(B) has subordinate priority to the lien
10 that secures the covered federally related mort-
11 gage loan.

12 “(o) REPORT TO CONGRESS.—Not later than the ex-
13 piration of the 12-month period beginning upon the date
14 of the enactment of the Foreclosure Prevention and Sound
15 Mortgage Servicing Act of 2011, and of each consecutive
16 12-month period thereafter, the Comptroller of the Cur-
17 rency, in consultation with the Director and the Chairman
18 of the Board of Governors of the Federal Reserve System,
19 shall provide a report to the Congress on the extent of
20 compliance by mortgagees and servicers with the require-
21 ments of this section and paragraphs (4) through (7) of
22 section 6(e).

23 “(p) COORDINATION WITH STATE LAW.—

24 “(1) IN GENERAL.—No provision of this section
25 shall be construed as annulling, altering, or affecting

1 the laws of any State relating to deferment of fore-
2 closures, except to the extent that such State laws
3 are inconsistent with the provisions of this section,
4 and then only to the extent of such inconsistency.

5 “(2) STANDARD FOR INCONSISTENCY.—A State
6 law shall not be considered to be inconsistent with
7 this section if the protection such State law affords
8 any consumer is greater than the protection afforded
9 by this section.

10 “(q) RULE OF CONSTRUCTION.—Nothing in this sec-
11 tion may be construed to prohibit any mortgagee or
12 servicer of a covered federally related mortgage loan from
13 providing a loan modification that exceeds the standards
14 established by the regulations issued pursuant to sub-
15 section (r).

16 “(r) REGULATIONS.—The Director shall issue regula-
17 tions to carry out this section. Such regulations shall be
18 issued not later than the expiration of the 180-day period
19 beginning upon the date of the enactment of the Fore-
20 closure Prevention and Sound Mortgage Servicing Act of
21 2011.”.

22 (b) DUTY OF LOAN SERVICER TO RESPOND TO BOR-
23 ROWER INQUIRIES.—Section 6(e) of the Real Estate Set-
24 tlement Procedures Act of 1974 (12 U.S.C. 2605(e)) is
25 amended—

1 (1) in paragraph (1), by striking subparagraph
2 (A) and inserting the following:

3 “(A) IN GENERAL.—If any servicer of a
4 federally related mortgage loan receives a quali-
5 fied written request from the borrower, an
6 agent of the borrower, or a housing counseling
7 agency approved by the Secretary of Housing
8 and Urban Development for information relat-
9 ing to the servicing of such loan (including doc-
10 uments executed at the time the loan was con-
11 summated or other documents related to the
12 loan), the servicer shall take action with respect
13 to such inquiry as specified in paragraph (2).”;

14 (2) in paragraph (2), in the matter preceding
15 subparagraph (A), by striking “60 days” and all
16 that follows through “any borrower” and inserting
17 the following: “14 calendar days after the receipt
18 from any borrower, borrower’s agent, or housing
19 counseling agency approved by the Secretary of
20 Housing and Urban Development”; and

21 (3) in paragraph (3), by striking “60-day” and
22 inserting “14-day”.

23 (c) COMPREHENSIVE DISCLOSURE AND FAIR PROC-
24 ESSING OF QUALIFIED WRITTEN REQUESTS.—Section
25 6(e) of the Real Estate Settlement Procedures Act of 1974

1 (12 U.S.C. 2605(e)) is amended by adding at the end the
2 following new paragraphs:

3 “(4) PROVISION OF INFORMATION REGARDING
4 MORTGAGE.—The servicer of a covered federally re-
5 lated mortgage loan (as such term is defined in sec-
6 tion 6A(n)) shall have available at all times the fol-
7 lowing information, which shall be provided to the
8 borrower or borrower’s agent in response to a quali-
9 fied written request by the borrower submitted in ac-
10 cordance with the deadlines set forth in paragraph
11 (1)(A):

12 “(A) Whether the account relating to such
13 loan is current, or if not, the date the account
14 went into default.

15 “(B) The current balance due on the loan,
16 including the amount of principal due, an
17 itemization of all fees due, an explanation of the
18 escrow balance, and whether there are any es-
19 crow deficiencies or shortages.

20 “(C) A full payment history that shows, in
21 a clear and easily understandable manner, all of
22 the activity on the loan since the origination of
23 the loan, including the escrow account, and the
24 application of payments made under the loan.

25 “(D) The initial terms of the loan.

1 “(E) A copy of the original note and secu-
2 rity instrument.

3 “(F) Identification of the owner of the
4 mortgage note and any investors in the note.

5 “(G) Any documents that limit, explain, or
6 modify the loss mitigation activities offered by
7 the servicer.

8 “(H) Any other information requested by
9 the borrower that is reasonably related to loss
10 mitigation activities.

11 “(I) Documents executed at the time the
12 loan was consummated or other documents re-
13 lated to the loan.

14 “(5) PROHIBITION OF ‘WRONG DOOR’ ACTIONS
15 FOR QUALIFIED WRITTEN REQUESTS.—All written
16 communications from the mortgagee or servicer of a
17 federally related mortgage loan to the borrower shall
18 include the address for receipt and handling of
19 qualified written requests. Any qualified written re-
20 quest received by the mortgagee or servicer shall be
21 valid notwithstanding receipt at any address other
22 than that designated by the mortgagee or servicer
23 for receipt and handling of such requests.

24 “(6) PROHIBITION OF FEE FOR RESPONSE TO
25 QUALIFIED WRITTEN REQUESTS.—A mortgagee or

1 servicer for a federally related mortgage loan may
2 not impose any fee for, or on account of, the prepa-
3 ration and submission by such mortgagee or servicer
4 of any response or statement required by this sub-
5 section.

6 “(7) PROHIBITION OF FORECLOSURE PENDING
7 DISCLOSURE.—In the case of a covered federally re-
8 lated mortgage loan (as such term is defined in sec-
9 tion 6A(n)), no foreclosure proceeding may be initi-
10 ated or continued against the borrower or the prin-
11 cipal residence of the borrower during any period in
12 which a qualified written request under this sub-
13 section is pending and the mortgagee or servicer has
14 not complied with the requirements of this sub-
15 section regarding the request.”.

16 (d) DAMAGES AND COSTS.—Section 6(f) of the Real
17 Estate Settlement Procedures Act of 1974 (12 U.S.C.
18 2605(f)) is amended—

19 (1) in the matter preceding paragraph (1), by
20 inserting “or of section 6A” after “this section”;

21 (2) in paragraphs (1)(B) and (2)(B)—

22 (A) by striking “a pattern or practice”
23 each place such term appears; and

1 (B) by striking “\$1,000” each place such
2 term appears and inserting “\$2,000 for each
3 violation”; and

4 (3) in paragraph (2)(B)(i), by striking
5 “\$500,000” and inserting “\$1,000,000”.

6 (e) CONFORMING AMENDMENT.—Section 17 of the
7 Real Estate Settlement Procedures Act of 1974 (12
8 U.S.C. 2615) is amended by striking “Nothing” and in-
9 serting “Except as provided in sections 6(e)(7) and 6A,
10 nothing”.

11 **SEC. 3. DUTIES OF LENDERS AND LOAN SERVICERS.**

12 The Truth in Lending Act is amended by inserting
13 before section 130 (15 U.S.C. 1640) the following new sec-
14 tion:

15 **“SEC. 129I. DUTIES OF LENDERS AND LOAN SERVICERS.**

16 “(a) STANDARD OF CARE.—

17 “(1) AGENCY RELATIONSHIP.—In the case of
18 any home loan serviced by a loan servicer on behalf
19 of a lender, the loan servicer shall be deemed an
20 agent of that lender, and shall be subject to all re-
21 quirements of agents otherwise applicable under
22 Federal or State law.

23 “(2) FAIR DEALING.—Each lender and loan
24 servicer shall, in addition to the duties imposed by
25 otherwise applicable provisions of Federal or State

1 law, with respect to each home mortgage loan, in-
2 cluding any home mortgage loan in default or in
3 which the homeowner has filed for bankruptcy—

4 “(A) act with reasonable skill, care, dili-
5 gence, and in accordance with the highest
6 standards; and

7 “(B) act in good faith and with fair deal-
8 ing in any transaction, practice, or course of
9 business associated with the home mortgage
10 loan.

11 “(3) TRAINING AND COMPETENCY.—Each lend-
12 er and loan servicer shall institute training, proce-
13 dures, and standards to ensure that borrowers are
14 treated fairly and competently.

15 “(b) RULES FOR ASSESSMENT OF FEE.—

16 “(1) IN GENERAL.—No home mortgage loan
17 contract may require, nor may any lender or loan
18 servicer assess or receive, any fees or charges other
19 than interest, late fees as specifically authorized in
20 this section, or fees assessed for nonsufficient funds,
21 and charges allowed pursuant to subsection
22 (h)(1)(B), until the home mortgage loan is the sub-
23 ject of a foreclosure proceeding and the debt on such
24 loan has been accelerated.

1 “(2) FEE LIMITATIONS.—Any permissible fee or
2 charge described under paragraph (1) shall be—

3 “(A) reasonable;

4 “(B) for services actually rendered; and

5 “(C) specifically authorized by the terms of
6 the home mortgage loan contract and State law.

7 “(3) ASSESSMENT AND DISCLOSURE.—

8 “(A) IN GENERAL.—Any permissible fee or
9 charge described under paragraph (1) shall
10 be—

11 “(i) assessed not later than 30 days
12 after the date on which the fee was ac-
13 crued; and

14 “(ii) explained clearly and conspicu-
15 ously in the next monthly accounting state-
16 ment provided to the borrower designated
17 in the home mortgage loan contract.

18 “(B) FAILURE TO COMPLY.—Failure by a
19 lender or loan servicer to comply with the re-
20 quirements set forth under subparagraph (A)
21 shall result in the waiver of the fee.

22 “(4) REQUIRED STATEMENTS.—Each month a
23 lender or loan servicer shall provide to each borrower
24 designated in a home mortgage loan contract en-
25 tered into by such lender or loan servicer a periodic

1 statement that clearly and in plain English ex-
2 plains—

3 “(A) the application of the prior month’s
4 payment by the borrower, including the alloca-
5 tion of the payment to interest, principal, es-
6 crow, and fees;

7 “(B) the status of the escrow account held
8 on behalf of the borrower, including the pay-
9 ments into and from the escrow account; and

10 “(C) the assessment of fees accruing in the
11 previous month, including the reason that such
12 fee accrued and the date such fee accrued.

13 “(c) MAXIMUM ALLOWABLE LATE FEES CHARGED
14 AFTER LOAN CLOSING.—

15 “(1) IN GENERAL.—No lender or loan servicer
16 may impose a charge or fee for late payment of any
17 amount due on a home mortgage loan—

18 “(A) unless the home mortgage loan con-
19 tract specifically authorizes the charge or fee;

20 “(B) in an amount in excess of 5 percent
21 of the amount of the payment past due;

22 “(C) before the end of the 15-day period
23 after the date the payment is due, or in the
24 case of a home mortgage loan on which interest
25 on each installment is paid in advance, before

1 the end of the 30-day period after the date the
2 payment is due; or

3 “(D) more than once with respect to a sin-
4 gle late payment.

5 “(2) RULE OF CONSTRUCTION.—For purposes
6 of this subsection, payments on any amount due on
7 a home mortgage loan shall be applied first to cur-
8 rent installments, then to delinquent payments, and
9 then to delinquency charges.

10 “(3) COORDINATION WITH SUBSEQUENT LATE
11 FEES.—If a home loan mortgage payment is other-
12 wise a full payment for the applicable period and is
13 paid on its due date or within an applicable grace
14 period, and the only delinquency or insufficiency of
15 payment is attributable to a late fee or delinquency
16 charge assessed on an earlier payment, no late fee
17 or delinquency charge may be imposed on such pay-
18 ment.

19 “(d) PAYOFF STATEMENTS.—

20 “(1) PROHIBITION ON FEES.—

21 “(A) IN GENERAL.—No lender or loan
22 servicer (or any third party acting on behalf of
23 such lender or loan servicer) may charge a fee
24 for transmitting to any borrower the amount

1 due to pay off the outstanding balance on the
2 home mortgage loan of such borrower.

3 “(B) EXCEPTION.—After a lender or loan
4 servicer (or any third party acting on behalf of
5 such lender or loan servicer) has provided the
6 information described in subparagraph (A)
7 without charge on 4 occasions during a cal-
8 endar year, the lender or loan servicer (or any
9 third party acting on behalf of such lender or
10 loan servicer) may thereafter charge a reason-
11 able fee for providing such information during
12 the remainder of the calendar year.

13 “(2) TIMING.—The information described in
14 subparagraph (A) shall be provided to the borrower
15 within a reasonable period of time but in any event
16 not more than 5 business days after the receipt of
17 the request by the lender or loan servicer.

18 “(e) CIVIL LIABILITY.—

19 “(1) IN GENERAL.—Any lender or loan servicer
20 who fails to comply with any requirement of this sec-
21 tion with respect to a borrower designated in a home
22 mortgage loan contract, is liable to such borrower in
23 an amount equal to the sum of—

24 “(A) any actual damages sustained by
25 such borrower as a result of the failure;

1 “(B) an amount not less than \$5,000; or

2 “(C) in the case of any successful action to
3 enforce the foregoing liability the costs of the
4 action, together with a reasonable attorney’s fee
5 as determined by the court.

6 “(2) JURISDICTION.—Any action by a borrower
7 for a failure to comply with the requirements of this
8 section may be brought in any United States district
9 court, or in any other court of competent jurisdic-
10 tion, not later than 3 years from the date of the oc-
11 currence of such violation. This subsection does not
12 bar a person from asserting a violation of this sec-
13 tion in an action by a lender or loan servicer to col-
14 lect the debt owed on a home mortgage loan, or fore-
15 close upon the home securing a home mortgage loan,
16 or to stop a foreclosure upon that home, which was
17 brought more than 3 years after the date of the oc-
18 currence of the violation as a matter of defense by
19 recoupment or set-off in such action. An action
20 under this section does not create an independent
21 basis for removal of an action to a United States
22 district court.

23 “(3) STATE ATTORNEY GENERAL ENFORCE-
24 MENT.—An action to enforce a violation of this sec-
25 tion may also be brought by the appropriate State

1 attorney general in any appropriate United States
2 district court, or any other court of competent juris-
3 diction, not later than 3 years after the date on
4 which the violation occurs. An action under this sec-
5 tion does not create an independent basis for re-
6 moval of an action to a United States district court.

7 “(f) DEFINITIONS.—In this section, the following
8 definitions shall apply:

9 “(1) LENDER.—The term ‘lender’ has the same
10 meaning as in section 3500.2 of title 24, Code of
11 Federal Regulations, as in effect on the date of en-
12 actment of this section.

13 “(2) LOAN SERVICER.—The term ‘loan servicer’
14 has the same meaning as the term ‘servicer’ in sec-
15 tion 6(i)(2) of the Real Estate Settlement Proce-
16 dures Act of 1974 (12 U.S.C. 2605(i)(2)).”.

17 **SEC. 4. NOTICE OF TRANSFER OF LOAN SERVICING.**

18 Paragraph (3) of section 6(b) of the Real Estate Set-
19 tlement Procedures Act of 1974 (12 U.S.C. 2605(b)(3))
20 is amended by adding at the end the following new sub-
21 paragraph:

22 “(H) A statement explaining—

23 “(i) whether the account of the bor-
24 rower is current, or if the account is not

1 current, an explanation of the reason and
2 date the account went into default;

3 “(ii) the current balance due on the
4 loan, including the principal due, an expla-
5 nation of the escrow balance, and whether
6 there are any escrow deficiencies or short-
7 ages; and

8 “(iii) a full payment history of the
9 borrower which shows in a clear and easily
10 understandable manner, all of the activity
11 on the home mortgage loan since the origi-
12 nation of the loan or the prior transfer of
13 servicing, including the escrow account,
14 and the application of payments.”.

15 **SEC. 5. SERVICER COMPENSATION.**

16 Not later than the expiration of the 6-month period
17 beginning on the date of the enactment of this Act, the
18 Director of the Bureau of Consumer Financial Protection
19 of the Federal Reserve System and the Federal banking
20 regulatory agencies shall issue regulations to ensure that
21 the means and manner of compensation of servicers of fed-
22 erally related mortgage loans is consistent with the pur-
23 poses of this Act and the amendments made by this Act,
24 and to the extent possible, does not provide incentives for

1 foreclosure of such mortgages or disincentives to engaging
2 in reasonable loss mitigation activities for such mortgages.

3 **SEC. 6. EFFECTIVE DATE.**

4 This Act and the amendments made by this Act shall
5 take effect on the later of the date of the enactment of
6 this Act or the designated transfer date established under
7 section 1062 of the Dodd-Frank Wall Street Reform and
8 Consumer Protection Act (12 U.S.C. 5582).

○