

112TH CONGRESS
1ST SESSION

H. R. 1783

To provide for enhanced mortgage-backed and asset-backed security investor protections, to prevent foreclosure fraud, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 5, 2011

Mr. MILLER of North Carolina (for himself, Mr. GEORGE MILLER of California, Mr. TURNER, Mr. CONYERS, and Mr. AL GREEN of Texas) introduced the following bill; which was referred to the Committee on Financial Services

A BILL

To provide for enhanced mortgage-backed and asset-backed security investor protections, to prevent foreclosure fraud, 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 Fraud and
5 Homeowner Abuse Prevention Act of 2011”.

6 **SEC. 2. DEFINITIONS.**

7 For purposes of this Act, the following definitions
8 shall apply:

1 (1) COMMISSION.—The term “Commission”
2 means the Securities and Exchange Commission.

3 (2) MORTGAGE.—The term “mortgage” means
4 a federally related mortgage loan, as defined in sec-
5 tion 3 of the Real Estate Settlement Procedures Act
6 of 1974 (12 U.S.C. 2602).

7 (3) MORTGAGE-BACKED SECURITY.—The term
8 “mortgage-backed security” means an asset-backed
9 security, as defined in section 3(a) of the Securities
10 Exchange Act of 1934 (15 U.S.C. 78c(a)), that is
11 collateralized by—

12 (A) a mortgage; or

13 (B) a collateralized mortgage obligation of
14 mortgage-backed securities.

15 (4) SECURITIZED RESIDENTIAL MORTGAGE
16 LOAN.—The term “securitized residential mortgage
17 loan” means any residential mortgage loan that
18 serves as collateral for a fixed-income or other secu-
19 rity that allows the holder of such security to receive
20 payments dependent on the cash flow from such res-
21 idential mortgage loan.

22 (5) SERVICER.—The term “servicer”—

23 (A) means any person responsible for the
24 management or collection of a pool of assets or

1 making allocations or distributions to holders of
2 asset-backed securities; and

3 (B) does not include any State or local
4 housing agency.

5 **SEC. 3. TRUST INDENTURE ACT PROTECTIONS.**

6 (a) DEFINITIONS.—Section 303 of the Trust Inden-
7 ture Act of 1939 (15 U.S.C. 77ccc) is amended—

8 (1) in paragraph (7), by adding at the end the
9 following: “Such term shall include mortgage-backed
10 securities.”;

11 (2) in paragraph (10), by adding at the end the
12 following: “Such term shall include servicers of
13 mortgage-backed securities.”; and

14 (3) by adding at the end the following:

15 “(19) The term ‘mortgage-backed security’
16 means an asset-backed security, as defined in section
17 3(a) of the Securities Exchange Act of 1934, that is
18 collateralized by—

19 “(A) a mortgage; or

20 “(B) a collateralized mortgage obligation
21 of mortgage-backed securities.

22 “(20) The term ‘servicer’—

23 “(A) means any person responsible for the
24 management or collection of a pool of assets or

1 making allocations or distributions to holders of
2 asset-backed securities; and

3 “(B) does not include any State or local
4 housing agency.”.

5 (b) CLARIFICATION OF EXEMPTIONS.—Section 304
6 of the Trust Indenture Act of 1939 (15 U.S.C. 77ddd)
7 is amended—

8 (1) in paragraph (2), by inserting “other than
9 residential mortgage-back securities” after “securi-
10 ties”;

11 (2) in paragraph (4), by inserting “other than
12 a residential mortgage-back security” after “secu-
13 rity”; and

14 (3) in paragraph (7), by inserting “other than
15 a registered mortgage-back security” after “secu-
16 rity”.

17 (c) FIDUCIARY DUTY.—Section 315 of the Trust In-
18 denture Act of 1939 (15 U.S.C. 77ooo) is amended by
19 adding at the end the following:

20 “(f) Each servicer of a mortgage-backed security
21 shall have a fiduciary duty to protect the economic inter-
22 ests of the investors as a whole in an asset-backed secu-
23 rity, which duty may not be waived by the investor.”.

1 (d) REMOVAL OF TRUSTEE.—Section 310 of the
2 Trust Indenture Act of 1939 (15 U.S.C. 77jjj) is amended
3 by adding at the end the following:

4 “(3) An indenture trustee that is a servicer of
5 mortgage backed securities may be removed if not
6 fewer than 50 percent of the investors petition a
7 court of competent jurisdiction for the removal of
8 such trustee.”.

9 (e) AMENDMENT OF POOLING AND SERVICING
10 AGREEMENT.—Section 316 of the Trust Indenture Act of
11 1939 (15 U.S.C. 77ppp) is amended by adding at the end
12 the following:

13 “(d) Notwithstanding any other provision of this title,
14 a pooling and servicing agreement with respect to any
15 mortgage-backed security may be amended without the
16 consent of a majority of the holders of such security, if
17 not fewer than 25 percent thereof petition a court of com-
18 petent jurisdiction for such action. For purposes of this
19 subsection a ‘pooling and servicing agreement’ is any con-
20 tract or a substantially similar document establishing the
21 transaction rights and duties of the parties to any mort-
22 gage-backed securitization transaction.”.

23 (f) PENALTY.—Section 325 of the Trust Indenture
24 Act of 1939 (15 U.S.C. 77yyy) is amended by striking
25 “\$10,000” and inserting “\$40,000”.

1 (g) DUTIES AND RESPONSIBILITIES OF
 2 SERVICERS.—Section 315(a) of the Trust Indenture Act
 3 of 1939 (15 U.S.C. 77000(a)) is amended—

4 (1) by striking “The indenture” and inserting
 5 “(1) The indenture”;

6 (2) by redesignating existing paragraphs (1)
 7 and (2) as subparagraphs (A) and (B), respectively,
 8 and moving the margins 2 ems to the right; and

9 (3) by adding at the end the following:

10 “(2) Paragraph (1) shall not apply with respect
 11 to an indenture that is a mortgage-backed security.
 12 An indenture trustee of such a security shall have a
 13 duty to verify the correctness of any such state-
 14 ments.”.

15 **SEC. 4. MORTGAGE RELATED SECURITY SERVICER AD-**
 16 **VANCES.**

17 The Securities Exchange Act of 1934 (15 U.S.C. 78a
 18 et seq.) is amended by inserting after section 15G the fol-
 19 lowing new section:

20 **“SEC. 15H. MORTGAGE RELATED SECURITIES SERVICER**
 21 **ADVANCES.**

22 “(a) COMMISSION RULEMAKING REQUIRED.—
 23 Promptly after the date of enactment of this section, the
 24 Commission shall, after consultation with the appropriate
 25 Federal banking agencies (as defined in section 3 of the

1 Federal Deposit Insurance Act (12 U.S.C. 1813)) and the
2 Bureau of Consumer Financial Protection where appro-
3 priate, issue regulations—

4 “(1) to require each servicer of a mortgage re-
5 lated security to notify investors therein of any ad-
6 vances to the securitization vehicle;

7 “(2) to prohibit the primary servicer of a mort-
8 gage related security from advancing delinquent pay-
9 ments of principal and interest by mortgagors for
10 more than 3 payment periods, unless financing or
11 reimbursement facilities to fund or reimburse the
12 primary servicers are available;

13 “(3) to prohibit the commingling of home-
14 owners’ monthly mortgage payments with the assets
15 of the servicer of a mortgage related security, other
16 than as necessary to clear payments received, but
17 not to exceed 2 business days;

18 “(4) to provide for recoupment, from any cur-
19 rent or former senior executive or director of a
20 servicer of a mortgage related security who has been
21 convicted of any violation of the securities laws, any
22 compensation received during the 3-year period pre-
23 ceding the date of the violation that the Commission
24 determines was connected to such violation, includ-
25 ing any unjust enrichment related to such violation,

1 except that, in the case of fraud, no time limit shall
2 apply;

3 “(5) to allow for the controlling holder of a
4 mortgage related security to appoint and remove the
5 servicers of such security, where the servicer has not
6 been in substantial compliance with its duties under
7 applicable law and all relevant agreements, as deter-
8 mined by the Commission;

9 “(6) to require each pooling and servicing
10 agreement related to a mortgage related security to
11 specify separate and independent servicers for de-
12 fault (in this section referred to as the ‘mandatory
13 special servicer’) and transactions processing; and

14 “(7) to require existing or future loans com-
15 prising the mortgage related security be transferred
16 to the mandatory special servicer, if such loans are
17 more than 60 days delinquent or where the holder
18 and servicer find that there is a significant risk of
19 default, based on all the facts and circumstances, in
20 which case, such mandatory special servicer shall be
21 compensated through an untranching, prorated inter-
22 est in the assets of the mortgage related security,
23 beginning at 1 percent.

24 For purposes of this subsection a ‘pooling and servicing
25 agreement’ is any contract establishing the transaction

1 rights and duties of the parties to any mortgage-backed
2 securitization transaction.

3 “(b) COMPENSATION.—The rules of the Commission
4 under this section shall include a definition of the term
5 ‘compensation’ to mean any financial remuneration, in-
6 cluding salary, bonuses, incentives, benefits, severance, de-
7 ferred compensation, or golden parachute benefits, and
8 any profits realized from the sale of the securities of the
9 company.”.

10 **SEC. 5. LIMITATION ON MORTGAGES HELD BY LOAN**
11 **SERVICERS.**

12 (a) LIMITATION.—The Truth in Lending Act (15
13 U.S.C. 1631 et seq.) is amended by inserting before sec-
14 tion 130 (15 U.S.C. 1640) the following new section:

15 **“SEC. 129I. LIMITATIONS ON MORTGAGES HELD BY LOAN**
16 **SERVICERS.**

17 “(a) LIMITATION.—Neither the servicer of a
18 securitized residential mortgage loan, nor any affiliate of
19 such servicer, may own, or hold any interest in, any other
20 residential mortgage loan that is secured by a mortgage,
21 deed of trust, or other equivalent consensual security in-
22 terest on the same dwelling or residential real property
23 that is subject to the mortgage, deed of trust, or other
24 security interest that secures the securitized residential
25 mortgage loan serviced by the servicer.

1 “(b) DEFINITIONS.—For purposes of this section, the
2 following definitions shall apply:

3 “(1) AFFILIATE.—The term ‘affiliate’ means,
4 with respect to a servicer, any person or entity that
5 controls, is controlled by, or is under common con-
6 trol with such servicer, as the Board shall prescribe
7 by regulation.

8 “(2) RESIDENTIAL MORTGAGE LOAN.—The
9 term ‘residential mortgage loan’ means any con-
10 sumer credit transaction that is secured by a mort-
11 gage, deed of trust, or other equivalent consensual
12 security interest on a dwelling or on residential real
13 property that includes a dwelling, other than a con-
14 sumer credit transaction under an open end credit
15 plan or an extension of credit relating to a plan de-
16 scribed in section 101(53D) of title 11, United
17 States Code.

18 “(3) SECURITIZED RESIDENTIAL MORTGAGE
19 LOAN.—The term ‘securitized residential mortgage
20 loan’ means any residential mortgage loan that
21 serves as collateral for a fixed-income or other secu-
22 rity that allows the holder of such security to receive
23 payments dependent on the cash flow from such res-
24 idential mortgage loan.

25 “(4) SERVICER.—The term ‘servicer’—

1 “(A) has the meaning provided in section
2 129A, except that such term includes a person
3 who receives any payments from a mortgagor,
4 including any amounts for escrow accounts, and
5 makes payments to the owner of the loan or
6 other third parties, including payments made
7 after default, pursuant to the terms of the rel-
8 evant contracts; and

9 “(B) excludes State and local housing
10 agencies.

11 “(c) INTERESTS.—For purposes of subsection (a),
12 ownership of, or holding an interest in a securitized resi-
13 dential mortgage loan includes ownership of, or holding
14 an interest in—

15 “(1) a pool of securitized residential mortgage
16 loans that contains such securitized residential mort-
17 gage loan; or

18 “(2) any security based on or backed by a pool
19 of securitized residential mortgage loans that con-
20 tains such securitized residential mortgage loan.”.

21 (b) CLERICAL AMENDMENT.—The table of sections
22 for chapter 2 of the Truth in Lending Act is amended
23 by inserting before the item relating to section 130 the
24 following new item:

“Sec. 129I. Limitations on mortgages held by loan servicers.”.

1 (c) APPLICABILITY.—The amendment made by sub-
2 section (a) shall apply—

3 (1) with respect to the servicer (or affiliate of
4 the servicer) of a residential mortgage loan that is
5 originated after the date of enactment of this Act,
6 on such date of enactment; and

7 (2) with respect to the servicer (or affiliate of
8 the servicer) of a residential mortgage loan that is
9 originated on or before the date of enactment of this
10 Act, upon the expiration of the 12-month period be-
11 ginning on such date of enactment.

12 (d) ENFORCEMENT PROVISIONS.—Section 130 of the
13 Truth in Lending Act (15 U.S.C. 1640) is amended by
14 adding at the end the following:

15 “(m) SERVICERS.—This section shall apply to
16 servicers (as that term is defined in section 129I) in the
17 same manner, and to the same extent as it applies to
18 creditors.”.

19 **SEC. 6. REAL ESTATE SETTLEMENT PROCEDURES ACT OF**
20 **1974 IMPROVEMENTS.**

21 (a) RESPA FEES AND RESTRICTIONS.—Section 8 of
22 the Real Estate Settlement Procedures Act of 1974 (12
23 U.S.C. 2607) is amended by adding at the end the fol-
24 lowing new subsections:

1 “(e) FEES TO BE REASONABLY RELATED TO
2 COSTS.—All fees charged for the rendering of a real estate
3 settlement service in connection with a transaction involv-
4 ing a federally related mortgage loan or incurred in con-
5 nection with servicing such loan shall be reasonably re-
6 lated to the cost of providing the service.

7 “(f) RESTRICTION ON USE OF SUBSIDIARIES AND
8 INSOURCING.—

9 “(1) IN GENERAL.—No servicer of a residential
10 mortgage loan shall render a real estate settlement
11 service in connection with a transaction involving a
12 federally related mortgage loan through a subsidiary
13 of such person or through insourcing.

14 “(2) INSOURCING DEFINED.—For purposes of
15 this subsection, the term ‘insourcing’ means pro-
16 viding for services to be conducted by the servicer’s
17 affiliated entities.”.

18 (b) FORCE-PLACED INSURANCE.—Section 6 of the
19 Real Estate Settlement Procedures Act of 1974 (12
20 U.S.C. 2605) is amended—

21 (1) in subsection (l), by adding at the end the
22 following new paragraph:

23 “(5) REQUIREMENT TO CONTINUE INSUR-
24 ANCE.—If a borrower’s insurance policy has not
25 been paid, the servicer shall make payments on the

1 current policy or seek reinstatement of such policy
2 where necessary and then make such payments, un-
3 less the policy has been terminated for reasons other
4 than nonpayment. Where escrow funds are not avail-
5 able, the servicer shall advance such funds. If the
6 current policy cannot be continued and force-placed
7 insurance is provided, the costs and the coverage
8 should be substantially equivalent to that provided in
9 a standard homeowner’s insurance policy.”;

10 (2) by adding at the end the following new sub-
11 section:

12 “(n) DISCLOSURES RELATED TO INSURANCE COV-
13 ERAGE INFORMATION.—

14 “(1) NOTICE.—Each servicer of a federally re-
15 lated mortgage loan shall notify the borrower of
16 such loan that the borrower is required to disclose
17 to the servicer the borrower’s property insurance
18 coverage information.

19 “(2) DISCLOSURE.—Each borrower who re-
20 ceives a notice described under paragraph (1) shall
21 disclose such information to the servicer.”.

22 (c) LOSS MITIGATION.—Section 6 of the Real Estate
23 Settlement Procedures Act of 1974 (12 U.S.C. 2605), as
24 amended by subsection (b), is further amended by adding
25 at the end the following new subsection:

1 “(o) LOSS MITIGATION.—

2 “(1) SINGLE ELECTRONIC RECORD AND SINGLE
3 POINT OF CONTACT.—Each servicer of a federally
4 related mortgage loan, or agents of such servicer,
5 shall, with respect to the borrower, establish—

6 “(A) a single electronic record for each ac-
7 count, the contents of which shall be accessible
8 throughout the servicer, or agents of such
9 servicer, including to all loss mitigation staff,
10 all foreclosure staff, and all bankruptcy staff;
11 and

12 “(B) a single point of contact for the bor-
13 rower for all loss mitigation activities.

14 “(2) GENERAL LOSS MITIGATION REQUIRE-
15 MENTS.—Each servicer of a federally related mort-
16 gage loan, or agents of such servicer, shall—

17 “(A) maintain adequate staffing and sys-
18 tems for tracking borrower documents and in-
19 formation that are relevant to foreclosure, loss
20 mitigation, bankruptcy, and other servicing op-
21 erations;

22 “(B) maintain adequate staffing and case-
23 load limits for employees responsible for han-
24 dling foreclosure, loss mitigation, bankruptcy,

1 and related communication with borrowers and
2 housing counselors;

3 “(C) set reasonable minimum experience,
4 education, and training requirements for loan
5 modification staff; and

6 “(D) document electronically each action
7 on a foreclosure, loan modification, bankruptcy,
8 or other servicing file, including all communica-
9 tion with the borrower and other parties.

10 “(3) TEAM LEADERS.—Each servicer of a fed-
11 erally related mortgage loan shall establish a single
12 individual to coordinate the servicer’s departments
13 handling the activities described under subpara-
14 graphs (A), (B), and (C) under paragraph (2).

15 “(4) LIMIT ON EMPLOYEE ACTIVITIES.—With
16 respect to employees of a servicer of a federally re-
17 lated mortgage loan who handle delinquent loans or
18 mandatory special servicers, the Bureau shall issue
19 regulations setting a reasonable limit on the number
20 of cases that may be handled by each such employee.

21 “(5) MANDATORY SPECIAL SERVICER DE-
22 FINED.—For purposes of this subsection, the term
23 ‘mandatory special servicer’ has the meaning given
24 such term in section 15H(a)(6) of the Securities Ex-
25 change Act of 1934.

1 “(6) ADDITIONAL REQUIREMENTS RELATED TO
2 TRANSFER OF LOANS.—

3 “(A) TO SUCCESSOR SERVICERS.—For any
4 ordinary transfer of servicing to a successor
5 servicer of a federally related mortgage loan or
6 subservicer, the transferring servicer shall—

7 “(i) inform the successor servicer (in-
8 cluding a subservicer) whether a loan
9 modification is pending;

10 “(ii) ensure that the successor servicer
11 shall accept and continue processing prior
12 loan modification requests; and

13 “(iii) ensure that successor servicer
14 shall honor trial and permanent loan modi-
15 fication agreements entered into by the
16 transferring servicer.

17 “(B) TO MANDATORY SPECIAL
18 SERVICERS.—A servicer of a federally related
19 mortgage loan shall refer any loan that is 60 or
20 more days delinquent to an independent manda-
21 tory special servicer or subservicer who shall
22 agree to the loss mitigation requirements of this
23 subsection.”.

1 (d) APPLICATION OF PAYMENTS.—Section 6(k)(1) of
2 the Real Estate Settlement Procedures Act of 1974 (12
3 U.S.C. 2605(k)) is amended—

4 (1) in subparagraph (D), by striking “or” at
5 the end;

6 (2) in subparagraph (E), by striking the period
7 and inserting “; or”; and

8 (3) by adding at the end the following new sub-
9 paragraph:

10 “(F) apply payments, including partial
11 payments, made by a borrower to any fees be-
12 fore first applying such payments to any out-
13 standing scheduled principal or interest pay-
14 ments.”.

15 (e) MONTHLY SERVICING STATEMENTS.—Section 6
16 of the Real Estate Settlement Procedures Act of 1974 (12
17 U.S.C. 2605), as amended by subsection (c), is further
18 amended by adding at the end the following new sub-
19 section:

20 “(p) MONTHLY SERVICING STATEMENTS.—The Bu-
21 reau shall issue regulations requiring each servicer of a
22 federally related mortgage loan to provide borrowers with
23 a monthly servicing statement that clearly describes—

24 “(1) the payment amounts due under the loan
25 agreement;

1 “(2) the date and time when such payments
2 must be received;

3 “(3) the location where such payments must be
4 received; and

5 “(4) a list of each payment received by the
6 servicer, along with how such payment was allocated
7 to the amounts owed by the borrower.”.

8 (f) UNFAIR AND DECEPTIVE ACTS OR PRACTICES
9 VIOLATIONS.—Section 19 of the Real Estate Settlement
10 Procedures Act of 1974 (12 U.S.C. 2617) is amended by
11 adding at the end the following new subsection:

12 “(e) AUTHORITY OF THE BUREAU WITH RESPECT
13 TO UDAP VIOLATIONS.—The Bureau’s authority with re-
14 spect to unfair and deceptive acts or practices by servicers
15 of federally related mortgage loans shall be the same as
16 its authority with respect to unfair and deceptive acts or
17 practices under the Consumer Financial Protection Act of
18 2010. Notwithstanding such authority, the following shall
19 apply:

20 “(1) SERVICE.—The Bureau shall provide the
21 servicer in violation with notification of such viola-
22 tion via personal service and such notification shall
23 include a notice of the servicer’s rights and any bond
24 requirements the servicer may be subject to by rea-
25 son of such violation.

1 “(2) DAMAGES.—Notwithstanding amounts
2 specified under the Federal Trade Commission Act,
3 a servicer convicted of unfair and deceptive acts or
4 practices with respect to a federally related mort-
5 gage loan shall be—

6 “(A) fined, regardless of whether there was
7 a pattern or practice of such violations, statu-
8 tory damages of not more than \$10,000 for
9 each such violation (such amount to be adjusted
10 annually beginning 1 year after the date of en-
11 actment of the Foreclosure Fraud and Home-
12 owner Abuse Prevention Act of 2011 by the
13 percentage corresponding to the annual percent-
14 age increase in the Consumer Price Index for
15 all urban consumers);

16 “(B) required to pay all actual damages,
17 including emotional distress, regardless of
18 whether there was detrimental reliance on the
19 part of the borrower; and

20 “(C) liable for attorneys fees.

21 “(3) BAR TO FORECLOSURE.—In any judicial
22 or non-judicial foreclosure proceeding, it shall be a
23 bar to foreclosure that the servicer of the federally
24 related mortgage loan on the property to be fore-
25 closed violated any provision of this section.

1 “(4) STATUTE OF LIMITATIONS.—The statute
2 of limitations for a servicer’s violation of unfair and
3 deceptive acts or practices laws with respect to a
4 federally related mortgage loan shall be 3 years from
5 the date on which violation occurs.”.

6 **SEC. 7. TRANSFER NOTIFICATION UNDER TILA.**

7 (a) IN GENERAL.—Section 131(g) of the Truth in
8 Lending Act (15 U.S.C. 1641(g)) is amended—

9 (1) in paragraph (1), by inserting “, including
10 any servicer with respect to a securitized residential
11 mortgage loan,” before “shall notify”; and

12 (2) by striking paragraph (2) and inserting the
13 following:

14 “(2) DEFINITIONS.—For purposes of this sub-
15 section—

16 “(A) the term ‘mortgage loan’ means any
17 consumer credit transaction that is secured by
18 the principal dwelling of a consumer; and

19 “(B) the terms ‘servicer’ and ‘securitized
20 residential mortgage loan’ have the same mean-
21 ings as in section 129I(b).”.

22 (b) SAFE HARBOR FOR MISTAKEN PAYMENTS;
23 FEES.—Section 131 of the Truth in Lending Act (15
24 U.S.C. 1641) is amended—

1 (1) by redesignating subsection (g) as sub-
2 section (i); and

3 (2) by inserting after subsection (f) the fol-
4 lowing:

5 “(g) TREATMENT OF MISTAKEN LOAN PAYMENTS
6 AFTER TRANSFER.—During the 60-day period beginning
7 on the effective date of transfer of the servicing of any
8 securitized residential mortgage loan, a late fee may not
9 be imposed on the consumer with respect to any payment
10 on such loan, and no such payment may be treated as late
11 for any other purpose, if the payment is received by the
12 transferor servicer (rather than the transferee servicer
13 who should properly receive payment) before the due date
14 applicable to such payment.

15 “(h) FEE WAIVERS UPON TRANSFER.—

16 “(1) IN GENERAL.—A creditor, including a
17 servicer, may not impose or collect—

18 “(A) any fee that is not listed as having
19 been incurred in—

20 “(i) the notice to the consumer of the
21 transfer of a securitized residential mort-
22 gage loan from the previous creditor or
23 servicer; or

24 “(ii) the notice to the consumer from
25 the new creditor or servicer; or

1 “(B) any fee that is not specified on the
2 monthly statement to the consumer as having
3 been incurred.

4 “(2) DEFINITIONS.—For purposes of this sub-
5 section, the terms ‘servicer’ and ‘securitized residen-
6 tial mortgage loan’ have the same meanings as in
7 section 129I(b).”.

8 **SEC. 8. LOAN MODIFICATIONS; DUAL TRACK PROCEEDINGS**
9 **PROHIBITED.**

10 (a) IN GENERAL.—Section 129A of the Truth in
11 Lending Act (as such section is redesignated by section
12 1402(a)(1) of the Dodd-Frank Wall Street Reform and
13 Consumer Protection Act) is amended—

14 (1) by redesignating subsections (f) and (g) as
15 subsection (h) and (i), respectively;

16 (2) in subsection (i), as so redesignated—

17 (A) by redesignating paragraphs (1)
18 through (3) as paragraphs (2) through (4), re-
19 spectively; and

20 (B) by inserting before paragraph (2), as
21 so redesignated, the following:

22 “(1) the term ‘affordable loan modification’
23 means an agreement to reduce the amount of sched-
24 uled regular payments under a mortgage note, in-
25 cluding any reduction of the principal amount of the

1 mortgage note, that is reflected in a permanent
2 change to the terms of the mortgage note under
3 such terms as the Bureau of Consumer Financial
4 Protection shall define.”; and

5 (3) by inserting after subsection (e) the fol-
6 lowing:

7 “(f) LIMITATION ON FORECLOSURE PRO-
8 CEEDINGS.—

9 “(1) INITIATION OF FORECLOSURE.—A servicer
10 may not initiate or continue a nonjudicial foreclosure
11 or a judicial foreclosure against a mortgagor that is
12 otherwise authorized under State law, unless the
13 servicer—

14 “(A) has determined whether the mort-
15 gator is eligible for an affordable loan modifica-
16 tion; and

17 “(B) has made such a modification, if the
18 mortgagor is eligible for a modification.

19 “(2) FORECLOSURE PROCEEDINGS PER-
20 MITTED.—Notwithstanding paragraph (1), a servicer
21 may initiate or continue a judicial or nonjudicial
22 foreclosure under State law against a mortgagor,
23 if—

24 “(A) the servicer—

1 “(i) determines that the mortgagor is
2 not eligible for a modification;

3 “(ii) notifies the mortgagor of the de-
4 termination under clause (i); and

5 “(iii) provides the mortgagor—

6 “(I) a copy of any net present
7 value calculation made by the servicer
8 in relation to an affordable loan modi-
9 fication, including any information
10 providing a basis for such net present
11 value calculation;

12 “(II) a copy of any note, deed of
13 trust, or other document necessary to
14 establish the right of the mortgagee to
15 foreclose on the mortgage, including
16 proof of assignment of the mortgage
17 to the mortgagee and the right of the
18 mortgagee to enforce the relevant note
19 under the law of the State in which
20 the real property securing the mort-
21 gage is located;

22 “(III) a copy of any language in
23 the pooling or servicing agreement
24 with respect to the mortgage that the

1 servicer believes prevents a modifica-
2 tion of the mortgage note;

3 “(IV) a copy of all correspond-
4 ence between the servicer and the
5 mortgagees and investors in which the
6 servicer attempts to obtain permission
7 to make a modification;

8 “(V) a complete and unaltered
9 copy of the pooling or servicing agree-
10 ment in electronic format; and

11 “(VI) the alternatives to fore-
12 closure available to the mortgagor, in-
13 cluding deed in lieu of foreclosures
14 and short sales; or

15 “(B) a mortgagor—

16 “(i) declines an affordable modifica-
17 tion in writing; or

18 “(ii) does not respond to the servicer’s
19 outreach activities (as defined by the Sec-
20 retary of Housing and Urban Develop-
21 ment) to obtain underlying information to
22 complete an application or obtain consent
23 to an affordable modification.

24 For purposes of subparagraph (A), a ‘pooling and
25 servicing agreement’ is any contract establishing the

1 transaction rights and duties of the parties to any
2 mortgage-backed securitization transaction.

3 “(3) BAR TO FORECLOSURE.—Failure to com-
4 ply with the requirements of this subsection shall be
5 a bar to the foreclosure of a mortgage, deed of trust,
6 or substantially similar instrument.

7 “(4) ELIGIBILITY.—A mortgagor shall be eligi-
8 ble to participate in an affordable loan modification
9 program if—

10 “(A) such person is a mortgagor under a
11 federally related loan secured by the principal
12 residence of the mortgagor, or is eligible to as-
13 sume such a federally related mortgage loan,
14 who is unable to make payments on a federally
15 related mortgage loan under such criteria as
16 the Director of the Bureau of Consumer Finan-
17 cial Protection shall define, in consultation with
18 the Secretary of Housing and Urban Develop-
19 ment and the Secretary of the Treasury; and

20 “(B) they are not an individual who has
21 abandoned the principal residence securing the
22 federally related mortgage loan.

23 “(5) CERTIFICATION OF DETERMINATION OF
24 ELIGIBILITY REQUIRED FOR SALE.—

1 “(A) SALE OF PROPERTY PROHIBITED.—If
2 the servicer of a mortgage does not file a cer-
3 tification with the appropriate land records of-
4 fice in the jurisdiction where the property se-
5 curing the mortgage is located, stating that the
6 servicer has determined the eligibility of the
7 mortgagor for an affordable loan modification—

8 “(i) the mortgagee may not sell the
9 property securing the mortgage; and

10 “(ii) no person that purchases the
11 property securing the mortgage may ini-
12 tiate an action to recover possession of the
13 property.

14 “(B) VIOLATIONS.—A sale of property in
15 violation of this paragraph shall be void.

16 “(C) CONTENTS.—The Director of the Bu-
17 reau of Consumer Financial Protection shall, by
18 rule, determine the contents of the certification
19 required under this subsection.

20 “(g) EARNED PRINCIPAL FORGIVENESS.—

21 “(1) IN GENERAL.—If, after reducing mortgage
22 note principal under earned principal forgiveness
23 provided in paragraph (2), a target affordable reg-
24 ular mortgage payment has not been achieved, the
25 servicer of the mortgage shall comply with the af-

1 affordable loan modification plan modification water-
2 fall steps of interest rate reduction, term extension,
3 and principal forbearance, as necessary to achieve a
4 target affordable regular mortgage payment.

5 “(2) EARNED PRINCIPAL FORGIVENESS.—

6 “(A) PRINCIPAL REDUCTION.—The Bu-
7 reau shall determine standards by which a
8 mortgagor who has received an affordable loan
9 modification shall remain in good standing in
10 order to participate in a reduction in mortgage
11 note principal under this subsection.

12 “(B) PRINCIPAL REDUCTION REQUIRED.—

13 Except as provided under subparagraph (C), a
14 servicer shall offer a mortgager an affordable
15 loan modification having the maximum amount
16 of principal reduction that results in a positive
17 net present value calculation.

18 “(C) EXCEPTIONS.—

19 “(i) GREATER PRINCIPAL REDUC-
20 TION.—A servicer may offer a greater
21 principal reduction, if such a reduction is
22 consistent with the terms of any contract
23 with respect to the mortgage.

24 “(ii) LOAN-TO-VALUE RATIO.—A
25 servicer is not required to offer an afford-

1 able loan modification having a principal
2 reduction that would result in a loan-to-
3 value ratio of less than 100 percent.

4 “(D) RULES OF CONSTRUCTION.—

5 “(i) MAXIMUM AMOUNT OF PRINCIPAL
6 REDUCTION.—A principal reduction
7 amount may be considered the maximum
8 amount if it is within \$1,000 of the actual
9 maximum amount.

10 “(ii) POSITIVE NET PRESENT VALUE
11 CALCULATION.—A net present value cal-
12 culation shall be deemed to be ‘positive’ if
13 the net present value result for an afford-
14 able loan modification scenario is greater
15 than the net present value result if no af-
16 fordable loan modification is made. Net
17 present value shall be calculated as the
18 benefit of all investors in a securitization
19 rather than the benefit of any particular
20 class of investors.

21 “(E) PRINCIPAL FORGIVENESS.—

22 “(i) TREATMENT OF PRINCIPAL RE-
23 DUCTION AMOUNT.—Any amount of prin-
24 cipal reduction under subparagraph (B)
25 shall be treated as non-interest-bearing

1 principal forbearance until the dates de-
2 scribed under clause (ii). The principal re-
3 duction described in this subparagraph
4 shall be deemed to be separate from and
5 exclusive of any other forbearance that
6 may be offered in conjunction with a modi-
7 fication under an affordable loan modifica-
8 tion program.

9 “(ii) REDUCTION OF PRINCIPAL.—The
10 servicer of a mortgage modified under an
11 affordable loan modification plan shall re-
12 duce the unpaid balance of the principal of
13 the mortgage by an amount equal to $\frac{1}{3}$ of
14 the total amount of the principal reduction
15 under subparagraph (B) on each of the fol-
16 lowing dates:

17 “(I) The date that is 1 year after
18 the date on which the affordable loan
19 modification begins.

20 “(II) The date that is 2 years
21 after the date on which the affordable
22 loan medication begins.

23 “(III) The date that is 3 years
24 after the date on which the affordable
25 loan modification begins.

1 “(iii) LIMITATION.—The Bureau may
2 not require a servicer to reduce mortgage
3 note principal to an amount that is less
4 than the market value of the property se-
5 curing the mortgage at the time of the re-
6 duction in principal.

7 “(3) CALCULATION OF TARGET AFFORDABLE
8 REGULAR MORTGAGE PAYMENT.—For purposes of
9 this subsection, the target affordable regular mort-
10 gage payment shall be calculated under such terms
11 as the Bureau shall define. Such terms shall—

12 “(A) be based on a fully amortizing prin-
13 cipal and interest payment over the remainder
14 of the term of the mortgage, as modified by a
15 reduction in principal; and

16 “(B) use the mortgage note interest rate in
17 effect at the time of a reduction in principal.

18 “(4) TREATMENT OF SUBORDINATE LIENS.—
19 The Bureau shall prescribe rules establishing proce-
20 dures governing the treatment of any whole loan
21 owned by the creditor (or any of its affiliates) and
22 secured by a subordinate lien on a property owned
23 by a mortgagor participating in an affordable loan
24 modification program.”.

1 **SEC. 9. FAIR DEBT COLLECTION PRACTICES ACT AMEND-**
2 **MENTS.**

3 (a) **APPLICABILITY TO SERVICERS.**—Section 803 of
4 the Fair Debt Collection Practices Act (15 U.S.C. 1692a)
5 is amended—

6 (1) in paragraph (6), by inserting before “The
7 term does not” the following: “The term includes
8 any servicer of a securitized residential mortgage
9 loan who uses any instrumentality of interstate com-
10 merce or the mails in the collection of any debts in
11 relation to any such securitized residential mortgage
12 loan.”; and

13 (2) by adding at the end the following:

14 “(9) **SECURITIZED RESIDENTIAL MORTGAGE**
15 **LOAN.**—The term ‘securitized residential mortgage
16 loan’ means any residential mortgage loan that
17 serves as collateral for a fixed-income or other secu-
18 rity that allows the holder of such security to receive
19 payments dependent on the cash flow from such res-
20 idential mortgage loan.

21 “(10) **SERVICER.**—The term ‘servicer’—

22 “(A) means any person responsible for the
23 management or collection of a pool of
24 securitized residential mortgage loans or mak-
25 ing allocations or distributions to holders of
26 asset-backed securities; and

1 “(B) does not include any State or local
2 housing agency.”.

3 (b) CIVIL LIABILITY.—Section 813 of the Fair Debt
4 Collection Practices Act (15 U.S.C. 1692k) is amended
5 by adding at the end the following:

6 “(f) Any debt collector that violates any provision of
7 this title with respect to a debt secured by the residence
8 of the consumer shall be liable to such consumer in the
9 amount of \$10,000 per violation.

10 “(g) After the end of the 1-year period beginning on
11 the date of the enactment of this subsection, amounts of
12 penalties specified under this section shall be annually ad-
13 justed to reflect inflation.”.

14 (c) RULEMAKING.—The Bureau of Consumer Finan-
15 cial Protection shall, not later than 270 days after the
16 date of enactment of this Act, issue rules to carry out the
17 amendments made by this section.

18 **SEC. 10. REGULATION OF SERVICER AFFILIATES BY BANK-**
19 **ING AGENCIES.**

20 (a) CAPITAL RESERVE STANDARDS.—Each of the ap-
21 propriate Federal banking agencies (as defined in section
22 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813))
23 shall promulgate regulations to establish independent cap-
24 ital reserve standards for any servicer of a federally re-

1 lated mortgage that is affiliated with a financial institu-
2 tion that is subject to regulation by that agency.

3 (b) TREATMENT OF DELINQUENT LOANS.—

4 (1) IN GENERAL.—The Securities and Ex-
5 change Commission shall issue regulations to provide
6 that, for purposes of generally accepted accounting
7 principles, any federally related mortgage loan that
8 is 120 days or more delinquent and that has not
9 been the subject of a modification or a debt restruc-
10 turing, as provided in section 129A of the Truth in
11 Lending Act shall be marked to market.

12 (2) INSURED DEPOSITORY INSTITUTION TREAT-
13 MENT.—An appropriate Federal banking agency (as
14 defined under section 3 of the Federal Deposit In-
15 surance Act (12 U.S.C. 1813)) may not find the reg-
16 ulations issues pursuant to paragraph (1) to be in-
17 consistent with the objectives described under sec-
18 tion 37(a)(1) of the Federal Deposit Insurance Act
19 (12 U.S.C. 1831n(a)(1)).

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