

112TH CONGRESS
1ST SESSION

H. R. 3566

To ensure uniformity and fairness in deficiency judgments arising from
foreclosures on mortgages for single family homes.

IN THE HOUSE OF REPRESENTATIVES

DECEMBER 6, 2011

Mr. TOWNS (for himself and Mr. GUTIERREZ) introduced the following bill;
which was referred to the Committee on the Judiciary

A BILL

To ensure uniformity and fairness in deficiency judgments
arising from foreclosures on mortgages for single family
homes.

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 “Fairness in Fore-
5 closures Act of 2011”.

6 **SEC. 2. REQUIREMENTS FOR DEFICIENCY JUDGMENTS.**

7 No action for a deficiency judgment arising from an
8 obligation under a residential mortgage may be brought
9 except in accordance with this Act.

1 **SEC. 3. TIMING.**

2 (a) **REQUIREMENT.**—An action for a deficiency judg-
3 ment arising from an obligation under a residential mort-
4 gage may be brought only during whichever of the fol-
5 lowing periods terminates earlier:

6 (1) The 12-month period that begins upon the
7 date of the foreclosure sale for the residential prop-
8 erty securing the obligation under the mortgage.

9 (2) Such period as may be provided under the
10 applicable State law for bringing an action for such
11 a deficiency judgment.

12 (b) **SATISFACTION OF MORTGAGE OBLIGATION.**—In
13 the case of any foreclosure on a residential mortgage, if
14 no action for a deficiency judgment arising from the obli-
15 gation under the mortgage is brought during the period
16 provided in subsection (a), the proceeds of any foreclosure
17 sale conducted with respect to the residential property se-
18 curing repayment of the obligation owed under the mort-
19 gage, regardless of amount, shall be deemed to be in full
20 satisfaction of the obligation under the mortgage and no
21 action to recover a deficiency in such amount may be
22 brought after the expiration of such period.

23 **SEC. 4. REQUIREMENT OF COMMERCIALLY REASONABLE**
24 **SALE.**

25 (a) **REQUIREMENT.**—No deficiency judgment arising
26 from an obligation under a residential mortgage may be

1 issued unless the court has determined that the fore-
2 closure sale for the property securing repayment of the
3 obligation under the mortgage was conducted in accord-
4 ance with the following requirements:

5 (1) The sale was conducted in a recognized
6 market in the manner that is usual with respect to
7 such market.

8 (2) The sale price of the property was current
9 in a recognized market at the time of disposition.

10 (3) The sale was otherwise in conformity with
11 reasonable commercial practices among dealers in
12 property of the type sold.

13 (b) DETERMINATION.—A party adversely affected by
14 a deficiency judgment may submit to the court evidence
15 contradicting the commercial reasonableness of the fore-
16 closure sale and of any costs incurred in such sale.

17 **SEC. 5. AMOUNT.**

18 (a) IN GENERAL.—The total amount recovered by a
19 plaintiff in a deficiency judgment arising from an obliga-
20 tion under a residential mortgage shall be the amount
21 equal to—

22 (1) the sum of—

23 (A) the amount of obligation owed under
24 the mortgage, as of the date of the foreclosure
25 sale for the property, as determined by the

1 court, with interest on such amount from the
2 date of the foreclosure sale at the rate provided
3 in the mortgage or related contract;

4 (B) if applicable, the amount owing on all
5 prior mortgages, liens, and encumbrances, with
6 interest; and

7 (C) any reasonable costs for, and disburse-
8 ments of, the action for the deficiency judg-
9 ment; less

10 (2) the greater of—

11 (A) the fair market value of the property,
12 as determined by an independent appraisal
13 completed during either of 10-day periods that
14 begin and end upon the date of the foreclosure
15 sale; or

16 (B) the amount of the sale price of the
17 property at the foreclosure sale.

18 (b) DETERMINATION OF FAIR MARKET VALUE.—A
19 party adversely affected by a deficiency judgment may
20 submit to the court evidence relevant to establishing the
21 fair market value of the property for purposes of sub-
22 section (a)(2)(A).

23 **SEC. 6. PROHIBITIONS ON DEFICIENCY JUDGMENTS.**

24 (a) NONRECOURSE MORTGAGES.—No action for a
25 deficiency judgment arising from the obligation under a

1 residential mortgage may be brought if the terms of the
2 mortgage prohibit the recovery of any amount of the obli-
3 gation due under the mortgage after—

4 (1) the residential property securing repayment
5 of such obligation is sold at foreclosure sale; or

6 (2) the mortgage is foreclosed in the manner
7 provided under the law of the State in which the
8 property is located.

9 (b) LOW-INCOME MORTGAGORS.—In the case of any
10 residential mortgage under which the mortgagor is a mem-
11 ber of a low-income family, the following shall apply:

12 (1) PROHIBITION ON ACTION.—No action may
13 be brought for a deficiency judgment arising from
14 the obligation under such residential mortgage.

15 (2) PROHIBITION ON REPORTING DEFICIENCY
16 TO CREDIT AGENCIES.—A deficiency in recovery,
17 from a foreclosure sale for the property securing re-
18 payment of the obligation due under the mortgage,
19 of the full amount of the obligation may not be re-
20 ported to any consumer reporting agency (as such
21 term is defined in section 603 of the Fair Credit Re-
22 porting Act (15 U.S.C. 1681a)) or disclosed to any
23 person other than the mortgagor or a personal rep-
24 resentative of the mortgagor, unless such disclosure
25 is otherwise required by law.

1 A determination of whether a family is a low-income fam-
2 ily for purposes of this subsection shall be based on the
3 income of the family as of the date of the foreclosure sale
4 or any other date during either of the 30-day periods be-
5 ginning and ending on the date of such sale, and shall
6 be based upon information obtained from the mortgagor
7 during the foreclosure process.

8 **SEC. 7. DEFINITIONS.**

9 For purposes of this Act, the following definitions
10 shall apply:

11 (1) **DEFICIENCY JUDGMENT.**—The term “defi-
12 ciency judgment” means a judgment, lien, or court
13 order, as provided for under State law, for recovery
14 in whole or in part, as determined by a court as just
15 and equitable, after a foreclosure or foreclosure sale
16 of the property securing repayment of the obligation
17 owed under a residential mortgage, of the portion of
18 the obligation that remains unsatisfied after applica-
19 tion of the proceeds of such sale to the obligation.

20 (2) **FORECLOSURE SALE.**—The term “fore-
21 closure sale” means, with respect to the residential
22 property securing repayment of the obligation under
23 a residential mortgage, the sale of the property pur-
24 suant to foreclosure on the mortgage, whether judi-
25 cial or nonjudicial, undertaken in accordance with

1 the laws of the State in which the property is lo-
2 cated, under which the proceeds of such sale are ap-
3 plied to such obligation.

4 (3) LOW-INCOME FAMILY.—The term “low-in-
5 come family” has the meaning given such term in
6 section 3(b) of the United States Housing Act of
7 1937 (42 U.S.C. 1437a(b)).

8 (4) MORTGAGE.—

9 (A) IN GENERAL.—The term “mortgage”
10 means a deed of trust, mortgage, deed to secure
11 debt, security agreement, or any other form of
12 instrument under which any property (real, per-
13 sonal, or mixed), or any interest in property
14 (including leaseholds, life estates, reversionary
15 interests, and any other estates under applica-
16 ble State law), is conveyed in trust, mortgaged,
17 encumbered, pledged, or otherwise rendered
18 subject to a lien for the purpose of securing the
19 payment of money or the performance of an ob-
20 ligation.

21 (B) CONDOMINIUMS AND COOPERA-
22 TIVES.—Such term includes a first mortgage
23 given to secure—

24 (i) the unpaid purchase price of a fee
25 interest in, or a long-term leasehold inter-

1 est in, a one-family unit in a multifamily
2 project, including a project in which the
3 dwelling units are attached or are manu-
4 factured housing units, semi-detached, or
5 detached, and an undivided interest in the
6 common areas and facilities that serve the
7 project; or

8 (ii) repayment of a loan made to fi-
9 nance the purchase of stock or membership
10 in a cooperative housing corporation the
11 permanent occupancy of dwelling units of
12 which is restricted to members of such cor-
13 poration, where the purchase of such stock
14 or membership entitles the purchaser to
15 the permanent occupancy of one of such
16 units.

17 (5) RESIDENTIAL MORTGAGE.—

18 (A) IN GENERAL.—The term “residential
19 mortgage” means a mortgage the primary pur-
20 pose of which is the purchase or financing of a
21 permanent 1- to 4-family dwelling that is used
22 as the principal residence of the mortgagor.

23 (B) DETERMINATION.—A determination of
24 whether a mortgage is a residential mortgage
25 for purposes of this Act shall be made based on

1 the purpose of the mortgage as of the time the
2 loan was made, as determined based upon infor-
3 mation obtained during the application process
4 for the mortgage.

5 **SEC. 8. APPLICABILITY AND PREEMPTION.**

6 (a) **APPLICABILITY.**—This Act shall apply with re-
7 spect to any action for a deficiency judgment arising from
8 an obligation under a residential mortgage brought in any
9 State or Federal court.

10 (b) **PREEMPTION.**—The provisions of this Act shall
11 preempt any State law to the extent that such law is in-
12 consistent with the limitations contained in such provi-
13 sions. The provisions of this Act shall not preempt any
14 State law that provides for defenses or places limitations
15 on a person’s liability in addition to those contained in
16 this Act or otherwise imposes greater restrictions than
17 those provided in this Act.

○