

112TH CONGRESS  
1ST SESSION

# H. R. 3595

To establish a mandatory mediation process for servicers of residential mortgages and borrowers.

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IN THE HOUSE OF REPRESENTATIVES

DECEMBER 7, 2011

Ms. WILSON of Florida introduced the following bill; which was referred to the Committee on Financial Services

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## A BILL

To establish a mandatory mediation process for servicers of residential mortgages and borrowers.

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 “Mandatory Foreclosure  
5 Mediation Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act, the following definitions shall apply:

8 (1) **ALTERNATIVE TO FORECLOSURE.**—The  
9 term “alternative to foreclosure”—

1 (A) means a course of action with respect  
2 to a mortgage offered by a servicer to a bor-  
3 rower as an alternative to a covered foreclosure  
4 action; and

5 (B) includes a short sale and a deed in lieu  
6 of foreclosure.

7 (2) BORROWER.—The term “borrower” means  
8 a mortgagor under a mortgage who is in default or  
9 at risk of imminent default, as determined by the  
10 Secretary through regulations.

11 (3) FORECLOSURE ACTION.—The term “fore-  
12 closure action” means a judicial or nonjudicial fore-  
13 closure.

14 (4) LOAN MODIFICATION PROGRAM.—The term  
15 “loan modification program” means a program or  
16 procedure designed to change the terms of a mort-  
17 gage in the case of the default, delinquency, or im-  
18 minent default or delinquency of a mortgagor, in-  
19 cluding a loan modification program established by  
20 a servicer that reduces the principal owed by the  
21 mortgagor on the mortgage.

22 (5) MORTGAGE.—The term “mortgage” means  
23 a federally related mortgage loan, as defined in sec-  
24 tion 3(1) of the Real Estate Settlement Procedures  
25 Act of 1974 (12 U.S.C. 2602(1)), that is secured by

1 a first or subordinate lien on residential real prop-  
2 erty.

3 (6) SECRETARY.—The term “Secretary” means  
4 the Secretary of Housing and Urban Development.

5 (7) SERVICER.—The term “servicer”—

6 (A) has the same meaning as in section  
7 6(i) of the Real Estate Settlement Procedures  
8 Act of 1974 (12 U.S.C. 2605(i)); and

9 (B) includes a person responsible for serv-  
10 icing a pool of mortgages.

11 **SEC. 3. MEDIATION REQUIRED BEFORE FORECLOSURE.**

12 (a) INITIATION OF FORECLOSURE ACTIONS.—A  
13 servicer may not initiate a foreclosure action against a  
14 borrower unless the servicer has—

15 (1) made a reasonable effort to initiate medi-  
16 ation proceedings in accordance with the process es-  
17 tablished in regulations prescribed pursuant to sub-  
18 section (c) to determine whether the borrower is eli-  
19 gible for a loan modification or an alternative to  
20 foreclosure; and

21 (2) offered the borrower a loan modification or  
22 an alternative to foreclosure, if the borrower is eligi-  
23 ble for the loan modification or alternative to fore-  
24 closure.

25 (b) SUSPENSION OF FORECLOSURE ACTIONS.—

1           (1) IN GENERAL.—A servicer shall suspend a  
2 foreclosure action that was initiated before the date  
3 of enactment of this Act until the servicer—

4           (A) completes a mediation proceeding in  
5 accordance with the process established in regu-  
6 lations prescribed pursuant to subsection (c) to  
7 determine whether the borrower is eligible for a  
8 loan modification or an alternative to fore-  
9 closure; and

10           (B) offers the borrower a loan modification  
11 or an alternative to foreclosure, if the borrower  
12 is eligible for a loan modification or an alter-  
13 native to foreclosure.

14           (2) SUSPENSION.—During the period of the  
15 suspension under paragraph (1), a servicer may  
16 not—

17           (A) send a notice of foreclosure to a bor-  
18 rower;

19           (B) conduct or schedule a sale of the real  
20 property securing the mortgage of the borrower;  
21 or

22           (C) cause final judgment to be entered  
23 against the borrower.

1           (3) REASONABLE EFFORTS.—A servicer is not  
2           required to suspend a foreclosure action under para-  
3           graph (1) if the servicer—

4                   (A) makes a reasonable effort to schedule  
5                   a mediation proceeding to determine whether  
6                   the borrower is eligible for a loan modification  
7                   or an alternative to foreclosure; and

8                   (B) documents that the borrower has not  
9                   agreed to a mediation proceeding to determine  
10                  whether the borrower is eligible for a loan modi-  
11                  fication or an alternative to foreclosure.

12           (4) RULE OF CONSTRUCTION.—Nothing in this  
13           section may be construed to require a servicer to  
14           delay an unavoidable foreclosure, such as foreclosure  
15           that results from a borrower abandoning the resi-  
16           dential real property securing a mortgage.

17           (c) ESTABLISHMENT OF MEDIATION PROCESS.—The  
18           Secretary shall establish through regulations a mediation  
19           process to determine whether the borrower is eligible for  
20           a loan modification or an alternative to foreclosure under  
21           this section.

22   **SEC. 4. BAR TO FORECLOSURE ACTIONS.**

23           (a) IN GENERAL.—Subject to subsection (b), a viola-  
24           tion of this Act shall be a bar to a foreclosure action.

1 (b) EFFECT OF SUBSEQUENT COMPLIANCE.—If a  
2 servicer is in compliance with this Act, the servicer may  
3 bring or proceed with a foreclosure action, without regard  
4 to a prior violation of this Act by the servicer.

5 **SEC. 5. REGULATIONS.**

6 Not later than 90 days after the date of enactment  
7 of this Act, the Secretary shall issue regulations to carry  
8 out this Act.

9 **SEC. 6. REPORT.**

10 Each servicer that initiates mediation proceedings  
11 under section 3 shall submit to the Secretary a quarterly  
12 report at such time, in such manner, and containing such  
13 information, with respect to such proceedings, as the Sec-  
14 retary may require.

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