

112TH CONGRESS  
1ST SESSION

# S. 824

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

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IN THE SENATE OF THE UNITED STATES

APRIL 14, 2011

Mr. BROWN of Ohio introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

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## 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:

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

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

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

10                   (A) a mortgage; or

11                   (B) a collateralized mortgage obligation of  
12 mortgage-backed securities.

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

20           (5) SERVICER.—The term “servicer”—

21                   (A) means any person responsible for the  
22 management or collection of a pool of assets or  
23 making allocations or distributions to holders of  
24 asset-backed securities; and

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

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

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

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

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

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

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

17 “(A) a mortgage; or

18 “(B) a collateralized mortgage obligation  
19 of mortgage-backed securities.

20 “(20) The term ‘servicer’—

21 “(A) means any person responsible for the  
22 management or collection of a pool of assets or  
23 making allocations or distributions to holders of  
24 asset-backed securities; and

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

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

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

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

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

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

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

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

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

6           (e) AMENDMENT OF POOLING AND SERVICING  
7 AGREEMENT.—Section 316 of the Trust Indenture Act of  
8 1939 (15 U.S.C. 77ppp) is amended by adding at the end  
9 the following:

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

20           (f) PENALTY.—Section 325 of the Trust Indenture  
21 Act of 1939 (15 U.S.C. 77yyy) is amended by striking  
22 “\$10,000” and inserting “\$40,000”.

23           (g) DUTIES AND RESPONSIBILITIES OF  
24 SERVICERS.—Section 315(a) of the Trust Indenture Act  
25 of 1939 (15 U.S.C. 77ooo(a)) is amended—

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

3 (2) by redesignating existing paragraphs (1)  
 4 and (2) as subparagraphs (A) and (B), respectively,  
 5 and moving the margins 2 ems to the right; and

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

7 “(2) Paragraph (1) shall not apply with respect to  
 8 an indenture that is a mortgage-backed security. An in-  
 9 denture trustee of such a security shall have a duty to  
 10 verify the correctness of any such statements.”.

11 **SEC. 4. MORTGAGE RELATED SECURITY SERVICER AD-**  
 12 **VANCES.**

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

16 **“SEC. 15H. MORTGAGE RELATED SECURITIES SERVICER**  
 17 **ADVANCES.**

18 “(a) COMMISSION RULEMAKING REQUIRED.—  
 19 Promptly after the date of enactment of this section, the  
 20 Commission shall, after consultation with the appropriate  
 21 Federal banking agencies (as defined in section 3 of the  
 22 Federal Deposit Insurance Act (12 U.S.C. 1813)) and the  
 23 Bureau of Consumer Financial Protection where appro-  
 24 priate, issue regulations—

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

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

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

15          “(4) to provide for recoupment, from any cur-  
16          rent or former senior executive or director of a  
17          servicer of a mortgage related security who has been  
18          convicted of any violation of the securities laws, any  
19          compensation received during the 3-year period pre-  
20          ceding the date of the violation that the Commission  
21          determines was connected to such violation, includ-  
22          ing any unjust enrichment related to such violation,  
23          except that, in the case of fraud, no time limit shall  
24          apply;

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

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

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

22 For purposes of this subsection a ‘pooling and servicing  
23 agreement’ is any contract establishing the transaction  
24 rights and duties of the parties to any mortgage-backed  
25 securitization transaction.



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

8 **SEC. 5. LIMITATION ON MORTGAGES HELD BY LOAN**  
 9 **SERVICERS.**

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

13 **“SEC. 129I. LIMITATIONS ON MORTGAGES HELD BY LOAN**  
 14 **SERVICERS.**

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

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

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

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

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

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

24                  “(A) has the meaning provided in section  
25                  129A, except that such term includes a person

1           who receives any payments from a mortgagor,  
 2           including any amounts for escrow accounts, and  
 3           makes payments to the owner of the loan or  
 4           other third parties, including payments made  
 5           after default, pursuant to the terms of the rel-  
 6           evant contracts; and

7                   “(B) excludes State and local housing  
 8                   agencies.

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

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

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

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

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

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

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

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

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

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

17       **SEC. 6. REAL ESTATE SETTLEMENT PROCEDURES ACT OF**  
18                                       **1974 IMPROVEMENTS.**

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

23       “(e) FEES TO BE REASONABLY RELATED TO  
24 COSTS.—All fees charged for the rendering of a real estate  
25 settlement service in connection with a transaction involv-

1 ing a federally related mortgage loan or incurred in con-  
 2 nection with servicing such loan shall be reasonably re-  
 3 lated to the cost of providing the service.

4 “(f) RESTRICTION ON USE OF SUBSIDIARIES AND  
 5 INSOURCING.—

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

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

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

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

20 “(5) REQUIREMENT TO CONTINUE INSUR-  
 21 ANCE.—If a borrower’s insurance policy has not  
 22 been paid, the servicer shall make payments on the  
 23 current policy or seek reinstatement of such policy  
 24 where necessary and then make such payments, un-  
 25 less the policy has been terminated for reasons other

1 than nonpayment. Where escrow funds are not avail-  
2 able, the servicer shall advance such funds. If the  
3 current policy cannot be continued and force-placed  
4 insurance is provided, the costs and the coverage  
5 should be substantially equivalent to that provided in  
6 a standard homeowner’s insurance policy.”;

7 (2) by adding at the end the following new sub-  
8 section:

9 “(n) DISCLOSURES RELATED TO INSURANCE COV-  
10 ERAGE INFORMATION.—

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

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

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

23 “(o) LOSS MITIGATION.—

24 “(1) SINGLE ELECTRONIC RECORD AND SINGLE  
25 POINT OF CONTACT.—Each servicer of a federally

1 related mortgage loan, or agents of such servicer,  
2 shall, with respect to the borrower, establish—

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

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

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

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

19 “(B) maintain adequate staffing and case-  
20 load limits for employees responsible for han-  
21 dling foreclosure, loss mitigation, bankruptcy,  
22 and related communication with borrowers and  
23 housing counselors;

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

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

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

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

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

24          “(6) ADDITIONAL REQUIREMENTS RELATED TO  
25          TRANSFER OF LOANS.—



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

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

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

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

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

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

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

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

5           (3) by adding at the end the following new sub-  
6           paragraph:

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

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

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

21                   “(1) the payment amounts due under the loan  
22                   agreement;

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

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

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

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

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

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

24                 “(2) DAMAGES.—Notwithstanding amounts  
25                 specified under the Federal Trade Commission Act,

1 a servicer convicted of unfair and deceptive acts or  
2 practices with respect to a federally related mort-  
3 gage loan shall be—

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

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

18 “(C) liable for attorneys fees.

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

24 “(4) STATUTE OF LIMITATIONS.—The statute  
25 of limitations for a servicer’s violation of unfair and

1       deceptive acts or practices laws with respect to a  
2       federally related mortgage loan shall be 3 years from  
3       the date on which violation occurs.”.

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

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

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

10          (2) by striking paragraph (2) and inserting the  
11 following:

12           “(2) DEFINITIONS.—For purposes of this sub-  
13 section—

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

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

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

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

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

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

13           “(h) FEE WAIVERS UPON TRANSFER.—

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

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

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

22           “(ii) the notice to the consumer from  
23           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                  subsections (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)).

○