

S 967 IS

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S. 967

To establish clear regulatory standards for mortgage servicers, and for other purposes.

IN THE SENATE OF THE UNITED STATES

May 12, 2011

Mr. MERKLEY (for himself, Ms. SNOWE, Mr. REED, Mr. DURBIN, Mr. BLUMENTHAL, Mr. INOUE, Mrs. SHAHEEN, Mr. SANDERS, Mr. WHITEHOUSE, Mr. WYDEN, and Mr. AKAKA) introduced the following bill; which was read twice and referred to the Committee on Banking, Housing, and Urban Affairs

A BILL

To establish clear regulatory standards for mortgage servicers, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

2. SECTION 1. SHORT TITLE.

This Act may be cited as the ‘Regulation of Mortgage Servicing Act of 2011’.

3. SEC. 2. DEFINITIONS.

In this Act, the following definitions shall apply:

(1) ALTERNATIVE TO FORECLOSURE- The term ‘alternative to foreclosure’-

(A) means a course of action with respect to a mortgage offered by a servicer to a borrower as an alternative to a covered foreclosure action; and

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

(2) BORROWER- The term ‘borrower’ means a mortgagor under a mortgage who is in default or at risk of imminent default, as determined by the Director, by rule.

(3) COVERED FORECLOSURE ACTION- The term ‘covered foreclosure action’ means a judicial or nonjudicial foreclosure.

(4) DIRECTOR- The term ‘Director’ means the Director of the Bureau of Consumer Financial Protection.

(5) INDEPENDENT REVIEWER- The term ‘independent reviewer’--

(A) means an entity that has the expertise and capacity to determine whether a borrower is eligible to participate in a loan modification program; and

(B) includes--

(i) an entity that is not a servicer; and

(ii) a division within a servicer that is independent of, and not under the same immediate supervision as, any division that makes determinations with respect to applications for loan modifications or alternatives to foreclosure.

(6) LOAN MODIFICATION PROGRAM- The term ‘loan modification program’--

(A) means a program or procedure designed to change the terms of a mortgage in the case of the default, delinquency, or imminent default or delinquency of a mortgagor; and

(B) includes--

(i) a loan modification program established by the Federal Government, including the Home Affordable Modification Program of the Department of the Treasury; and

(ii) a loan modification program established by a servicer.

(7) MORTGAGE- The term ‘mortgage’ means a federally related mortgage loan, as defined in section 3 of the Real Estate Settlement Procedures Act of 1974 (12 U.S.C. 2602), that is secured by a first or subordinate lien on residential real property.

(8) SERVICER- The term ‘servicer’--

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

(B) includes a person responsible for servicing a pool of mortgages.

4. SEC. 3. SINGLE POINT OF CONTACT.

(a) Case Manager Required- A servicer shall assign 1 case manager to each borrower that seeks a loan modification or an alternative to foreclosure.

(b) Duties of Case Manager- The case manager assigned under subsection (a) shall be an individual who--

(1) manages the communications between the servicer and the borrower;

(2) has the authority to make decisions about the eligibility of the borrower for a loan modification or an alternative to foreclosure;

(3) is available to communicate with the borrower by telephone and email during business hours; and

(4) remains assigned to the borrower until the earliest of--

(A) the date on which the borrower accepts a loan modification or an alternative to foreclosure;

(B) the date on which the servicer forecloses on the mortgage of the borrower; and

(C) the date on which a release of the mortgage of the borrower is recorded in the appropriate land records office, as determined by the Director, by rule.

(c) Assistance for Case Managers- A servicer may assign an employee to assist a case manager assigned under subsection (a), if the case manager remains available to communicate with the borrower by telephone and email.

5. SEC. 4. DETERMINATION OF ELIGIBILITY FOR LOAN MODIFICATION PROGRAM OR ALTERNATIVE TO FORECLOSURE REQUIRED BEFORE FORECLOSURE.

(a) Initiation of Covered Foreclosure Actions- A servicer may not initiate a covered foreclosure action against a borrower unless the servicer has--

(1) completed a full review of the file of the borrower to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure;

(2) made a reasonable effort to obtain the information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure, as described in subsection (c); and

(3) offered the borrower a loan modification or an alternative to foreclosure, if the borrower is eligible for the loan modification or alternative to foreclosure.

(b) Suspension of Covered Foreclosure Actions-

(1) IN GENERAL- A servicer shall suspend a covered foreclosure action that was initiated before the date of enactment of this Act until the servicer--

(A) completes a full review of the file of the borrower to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure;

(B) notifies the borrower of the determination under subparagraph (A); and

(C) offers the borrower a loan modification or an alternative to foreclosure, if the borrower is eligible for a loan modification or an alternative to foreclosure.

(2) SUSPENSION- During the period of the suspension under paragraph (1), a servicer may not--

(A) send a notice of foreclosure to a borrower;

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

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

(3) REASONABLE EFFORTS- A servicer is not required to suspend a covered foreclosure action under paragraph (1) if the servicer--

(A) makes a reasonable effort to obtain information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure, as described in subsection (c); and

(B) documents that the servicer has not received information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure before the end of the applicable period under subsection (c).

(4) RULE OF CONSTRUCTION- Nothing in this section may be construed to require a servicer to delay an unavoidable foreclosure, such as foreclosure that

results from a borrower abandoning the residential real property securing a mortgage.

(c) Reasonable Effort To Obtain Necessary Information- A servicer shall be deemed to have made a reasonable effort to obtain information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure if--

(1) during the 30-day period beginning on the date of delinquency of the borrower, the servicer attempts to establish contact with the borrower by--

(A) making not fewer than 4 telephone calls to the telephone number on record for the borrower, at different times of the day; and

(B) sending not fewer than 2 written notices to the borrower at the address on record for the borrower, at least 1 of which shall be delivered by certified mail, requesting that the borrower contact the servicer;

(2) in the case that the borrower responds in writing or by telephone to an attempt to establish contact under paragraph (1), the servicer--

(A) notifies the borrower, in writing, that the servicer lacks information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure; and

(B) sends the borrower a written request that the borrower transmit to the servicer all information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure, not later than 30 days after the date on which the servicer sends the request;

(3) in the case that the servicer does not receive from the borrower all information requested under paragraph (2)(B) on or before the date that is 30 days after the date on which the servicer sends the notice under paragraph (2), the servicer sends the borrower a written request that the borrower transmit to the servicer all information necessary to determine whether the borrower is eligible for a loan modification or an alternative to foreclosure, not later than 15 days after the date on which the servicer sends the request; and

(4) in the case that the servicer does not receive from the borrower all information requested under paragraph (3) on or before the date that is 15 days after the date on which the servicer sends the request under paragraph (3), the servicer notifies the borrower that the servicer intends to initiate or continue a covered foreclosure action.

6. SEC. 5. THIRD PARTY REVIEW.

Before a servicer notifies a borrower that the borrower is not eligible for a loan modification or an alternative to foreclosure, the servicer shall obtain the services of an independent reviewer to--

(1) review the file of the borrower; and

(2) determine whether the borrower is eligible for a loan modification or an alternative to foreclosure.

7. SEC. 6. BAR TO FORECLOSURE ACTIONS.

(a) In General- Subject to subsection (b), a violation of this Act shall be a bar to a covered foreclosure action.

(b) Effect of Subsequent Compliance- If a servicer is in compliance with this Act, the servicer may bring or proceed with a covered foreclosure action, without regard to a prior violation of this Act by the servicer.

8. SEC. 7. REGULATIONS.

Not later than 90 days after the date of enactment of this Act, the Director, in consultation with the Secretary of Housing and Urban Development and the Secretary of the Treasury, shall issue regulations to carry out this Act.

9. SEC. 8. REPORT.

Not later than 1 year after the date of enactment of this Act, the Director shall submit to Congress a report that contains--

(1) an evaluation of the effect of this Act on--

(A) State law; and

(B) communication between servicers and borrowers; and

(2) a description of any problems concerning the implementation of this Act.