

111TH CONGRESS  
1ST SESSION

# H. R. 3451

To amend the Real Estate Settlement Procedures Act of 1974 to require mortgagees for mortgages in default to engage in reasonable loss mitigation activities, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 31, 2009

Ms. WATERS introduced the following bill; which was referred to the  
Committee on Financial Services

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## A BILL

To amend the Real Estate Settlement Procedures Act of 1974 to require mortgagees for mortgages in default to engage in reasonable loss mitigation activities, 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 Prevention  
5       and Sound Mortgage Servicing Act of 2009”.

1 **SEC. 2. DUTY TO ENGAGE IN LOSS MITIGATION.**

2 (a) DUTY.—The Real Estate Settlement Procedures  
3 Act of 1974 is amended by inserting after section 6 (12  
4 U.S.C. 2605) the following new section:

5 **“SEC. 6A. DUTY TO ENGAGE IN LOSS MITIGATION.**

6 “(a) DUTY FOR COVERED FEDERALLY RELATED  
7 MORTGAGE LOANS.—Upon default of any federally re-  
8 lated mortgage loan that is secured by a lien on the prin-  
9 cipal residence of the borrower or mortgagor, the mort-  
10 gagee shall engage in reasonable loss mitigation activities  
11 that provide for—

12 “(1) the long-term affordability of the loan; and

13 “(2) the maximum retention of home equity.

14 “(b) NO FORECLOSURE WITHOUT LOSS MITIGA-  
15 TION.—No foreclosure of any covered federally related  
16 mortgage loan shall be initiated if the mortgagee or  
17 servicer has at any time failed to comply with the require-  
18 ments of this section with respect to such loan.

19 “(c) LOSS MITIGATION ACTIVITIES.—

20 “(1) IN GENERAL.—For purposes of this sec-  
21 tion, loss mitigation activities shall include—

22 “(A) priority loss mitigation activities  
23 under paragraph (6);

24 “(B) secondary loss mitigation activities  
25 under paragraph (7);

1           “(C) last-resort loss mitigation activities  
2           under paragraph (8); and

3           “(D) any loss mitigation activities con-  
4           sistent with the Making Home Affordable pro-  
5           gram of the Secretary of the Treasury, as an-  
6           nounced on March 4, 2009, including any sub-  
7           sequent updates.

8           “(2) EXCEPTIONS FOR SERVICERS PARTICI-  
9           PATING IN THE MAKING HOME AFFORDABLE PRO-  
10          GRAM.—Any mortgagee or servicer that meets its  
11          obligation under this Act through subparagraph (D)  
12          of paragraph (1) shall not be subject to the require-  
13          ments of paragraphs (3), (4), (6), and (7).

14          “(3) ORDER OF PURSUIT.—In complying with  
15          subsection (a), the mortgagee or servicer shall pur-  
16          sue loss mitigation activities in the following order:  
17          first priority loss mitigation activities, then sec-  
18          ondary loss mitigation activities, and then last-resort  
19          loss mitigation activities. If any loss mitigation activ-  
20          ity is taken, the mortgagee or servicer shall provide  
21          written notice of such activity to the borrower or  
22          mortgagor by mail not later than 7 business days  
23          after such action is taken.

24          “(4) CONSIDERATION OF CIRCUMSTANCES IN  
25          PROVISION OF LOSS MITIGATION ACTIVITIES.—In de-

1       termining the type of loss mitigation activity to pro-  
2       vide with respect to a covered federally related mort-  
3       gage loan, the mortgagee or servicer may consider  
4       the financial and personal circumstances of the bor-  
5       rower or mortgagor. The mortgagee or servicer may  
6       provide—

7               “(A) priority loss mitigation activities with  
8               respect to borrowers or mortgagors who have  
9               experienced a permanent or long-term change  
10              in their financial condition that prevents them  
11              from making payments due under the loan, in-  
12              cluding illness, injury, death of a wage earner,  
13              interest rate reset, or significant decline in the  
14              value of the property that is subject to the lien  
15              securing the loan;

16              “(B) secondary loss mitigation activities  
17              with respect to borrowers or mortgagors who  
18              have experienced a short-term change in their  
19              financial condition having a duration of less  
20              than 3 months that prevents them from making  
21              payments due under the loan; and

22              “(C) last resort loss mitigation activities  
23              with respect to borrowers or mortgagors who,  
24              notwithstanding priority or secondary loss miti-  
25              gation activities taken with respect to the mort-

1           gage, will be unable to make payments due  
2           under the loan.

3           “(5) PROHIBITIONS.—A mortgagee or servicer  
4           with respect to a covered federally related mortgage  
5           loan—

6                   “(A) may not limit the number of loss  
7                   mitigation activities provided with respect to a  
8                   borrower or mortgagor;

9                   “(B) shall comply with the requirements of  
10                  under this section with respect to the loan with-  
11                  out regard to whether there has been a previous  
12                  default under the loan; and

13                  “(C) may not require a minimum loan-to-  
14                  value ratio for the provision of any loss mitiga-  
15                  tion activity or use such a ratio to determine  
16                  the type of loss mitigation activity provided  
17                  with respect to a borrower or mortgagor.

18           “(6) PRIORITY LOSS MITIGATION ACTIVITIES.—  
19           For purposes of this section, the term ‘priority loss  
20           mitigation activities’ includes, with respect to a cov-  
21           ered federally related mortgage loan, activities that  
22           preserve the borrower’s or mortgagor’s ownership in-  
23           terest in the property that is subject to the lien se-  
24           curing the loan by modifying the contractual terms  
25           of the loan. Priority loss mitigation activities include

1 modification of the loan terms that provide for the  
2 following:

3 “(A) ALTERATION OF TERMS.—Reduction  
4 of the interest rate of the loan, forgiveness of  
5 loan principal or interest, conversion from an  
6 adjustable rate mortgage to a fixed rate mort-  
7 gage, and reamortization of the loan in connec-  
8 tion with an extension of the final maturity  
9 date of the loan.

10 “(B) SHORT REFINANCING.—Short refi-  
11 nancing of the loan consisting of acceptance of  
12 payment from or on behalf of the borrower or  
13 mortgagor of an amount that is less than the  
14 full amount alleged to be due and owing under  
15 the loan, including principal, interest, and fees,  
16 in full satisfaction of the obligation under the  
17 loan and as part of a refinance transaction  
18 under which the property that is subject to the  
19 lien securing the loan is intended to remain the  
20 principal residence of the borrower or mort-  
21 gator.

22 “(7) SECONDARY LOSS MITIGATION ACTIVI-  
23 TIES.—For purposes of this section, the term ‘sec-  
24 ondary loss mitigation activities’ includes, with re-  
25 spect to a covered federally related mortgage loan,

1 other activities that avoid foreclosure and preserve  
2 the borrower's or mortgagor's ownership interest in  
3 the property that is subject to the lien securing the  
4 loan, but do not change the contractual terms of the  
5 loan. Secondary loss mitigation activities include the  
6 following activities:

7           “(A) Waiver of any late payment charge,  
8           penalty interest, or any other fees or charges,  
9           including legal fees, or any combination thereof.

10           “(B) Establishment of a repayment plan  
11           under which the borrower or mortgagor re-  
12           sumes regularly scheduled payments and pays  
13           additional amounts at scheduled intervals to  
14           cure the delinquency.

15           “(C) Forbearance under the loan that pro-  
16           vides for a temporary reduction in, or cessation  
17           of, monthly payments followed by a reamortiza-  
18           tion of the amounts due under the loan, includ-  
19           ing arrearage, and a new schedule of repayment  
20           amounts.

21           “(8) LAST-RESORT LOSS MITIGATION ACTIVI-  
22           TIES.—For purposes of this section, the term ‘last  
23           resort loss mitigation activities’ includes, with re-  
24           spect to a covered federally related mortgage loan,  
25           activities that avoid foreclosure but do not preserve

1 the borrower's or mortgagor's ownership interest in  
2 the property that is subject to the lien securing the  
3 loan. Last-resort loss mitigation activities include  
4 the following activities:

5 “(A) Short sale of the principal residence  
6 that is subject to the lien securing the loan,  
7 consisting of acceptance of payment from or on  
8 behalf of the borrower or mortgagor of an  
9 amount less than the amount alleged to be due  
10 and owing under the loan, including principal,  
11 interest, and fees, in full satisfaction of the obli-  
12 gation under such loan and as part of a sale  
13 transaction in which the property is not in-  
14 tended to remain the principal residence of the  
15 borrower or mortgagor.

16 “(B) Assumption of the borrower's obliga-  
17 tions under the loan by a third party.

18 “(C) Cancellation or postponement of a  
19 foreclosure sale to allow the borrower or mort-  
20 gagor additional time to sell the property.

21 “(D) Acquisition of the property by the  
22 mortgagee or servicer by deed in lieu of fore-  
23 closure.

24 “(9) PROTECTION OF CONTRACT RIGHTS.—Not-  
25 withstanding subsections (a) and (b), nothing in this



1 section shall require a servicer for a covered feder-  
2 ally related mortgage loan to breach a contract with  
3 the mortgagee (or its predecessors in interest, suc-  
4 cessors, or assigns) entered into before the enact-  
5 ment of the Foreclosure Prevention and Sound  
6 Mortgage Servicing Act of 2009.

7 “(d) AFFORDABLE PAYMENTS.—

8 “(1) IN GENERAL.—The affordability of any  
9 scheduled payments due from the borrower or mort-  
10 gator pursuant to loss mitigation activities and  
11 whether the activities are in the best financial inter-  
12 ests of the borrower or mortgagor shall be taken  
13 into consideration in determining whether a mort-  
14 gagee has engaged, for purposes of subsection  
15 (a)(1), in reasonable loss mitigation activities that  
16 provide for long-term affordability of the loan. Pay-  
17 ments under a loan shall be considered to be afford-  
18 able for a borrower or mortgagor for purposes of  
19 this subsection if such payments result in a debt-to-  
20 income ratio or residual income of the borrower or  
21 mortgagor in an amount less than or equal to 31  
22 percent of the monthly gross income of the borrower  
23 or mortgagor or such other lower percentage as a  
24 mortgagee or servicer may determine. Payments  
25 under a loan shall not be considered to be affordable

1 for a borrower or mortgagor for purposes of this  
2 subsection unless such the amount of such payments  
3 is 10 percent less than the amount of payments due  
4 under the loan before loss mitigation activities with  
5 respect to the loan.

6 “(2) INCOME USED IN DETERMINING AFFORD-  
7 ABILITY.—

8 “(A) DOCUMENTATION.—A mortgagee or  
9 servicer may request documentation of the in-  
10 come of a borrower or mortgagor before com-  
11 mencing loss mitigation activities.

12 “(B) VERIFICATION.—The mortgagor’s or  
13 borrower’s income shall be verified by—

14 “(i) requiring the mortgagor or bor-  
15 rower to provide a signed form for the re-  
16 quest for a transcript of the mortgagor’s  
17 or borrower’s Federal tax return (Form  
18 4506–T of the Internal Revenue Service);

19 “(ii) obtaining the most recent Fed-  
20 eral tax return on file for each borrower  
21 who signed the note for the covered feder-  
22 ally related mortgage loan;

23 “(iii) by requiring the mortgagor or  
24 borrower to provide the two most recent

1 payroll receipts for each wage earner who  
2 signed such note; and

3 “(iv) in the case of mortgagors or bor-  
4 rowers who are self-employed or who have  
5 non-wage income, by obtaining other third-  
6 party documents that provide reasonably  
7 reliable evidence of income.

8 “(C) ABSENCE OF SUFFICIENT LIQUID AS-  
9 SETS.—Loss mitigation activities with respect  
10 to a covered federally related mortgage loan  
11 shall not be provided unless the mortgagor or  
12 borrower has represented and warranted that  
13 the mortgagor or borrower does not have suffi-  
14 cient liquid assets to make the monthly pay-  
15 ments due under the loan.

16 “(3) DEBT-TO-INCOME RATIO.—In determining  
17 the debt-to-income ratio or residual income of a  
18 mortgagor or borrower under a covered federally re-  
19 lated mortgage loan for purposes of this subsection,  
20 the amount of monthly payment under the loan shall  
21 include principal, interest, taxes, insurance, flood in-  
22 surance, any homeowner’s association and condo-  
23 minium fees, and any second or subordinate liens.

24 “(4) MONTHLY INCOME.—In determining  
25 monthly income of a mortgagor or borrower for pur-

1 poses of this subsection, all wages, salary, overtime,  
2 fees, commissions, tips, Social Security benefits, pen-  
3 sions, and all other income shall be considered.

4 “(5) WRITTEN NOTIFICATION OF AFFORD-  
5 ABILITY CALCULATION.—The mortgagee or servicer  
6 shall notify the borrower or mortgagor in writing of  
7 the results of the determination of affordability  
8 under this subsection and the income on which the  
9 determination was based. Such written notice shall  
10 be provided by mail not later than 7 business days  
11 after such action is taken or as part of the written  
12 notice required under subsection (c)(3), whichever is  
13 earlier.

14 “(e) NOTIFICATION OF INTEREST RATE IN-  
15 CREASE.—In the case of any covered federally related  
16 mortgage loan that is an adjustable rate mortgage, not  
17 less than 60 days before any increase in the periodic pay-  
18 ment due for principal or interest or in the interest rate  
19 charged under the loan, but not more than 120 days be-  
20 fore such increase, the mortgagee or servicer shall, in addi-  
21 tion to any notices required by the contract and other law,  
22 inform the borrower in writing by mail and by telephone  
23 of the date that such payment or interest rate increase  
24 will occur and of the amount of the projected monthly pay-  
25 ment under the loan after such increase, based on the pre-

1 vailing interest rate of the index used for such increase  
2 with the 30-day period ending upon such notice. The writ-  
3 ten notice shall provide the information required under  
4 this subsection in a clear and conspicuous format.

5 “(f) SUBORDINATE LIENS.—Each mortgagee with re-  
6 spect to a subordinate lien shall provide to mortgagees  
7 having senior liens information needed by such senior  
8 mortgagees to engage in reasonable loss mitigation as re-  
9 quired by this section. Any modification of the loan under-  
10 taken as part of loss mitigation activity shall not impair  
11 the priority status of liens under the modified loan, to the  
12 extent that there are no additional funds advanced to the  
13 borrower in connection with such modification.

14 “(g) DIRECT ACCESS TO AUTHORIZED LOSS MITIGA-  
15 TION PERSONNEL.—

16 “(1) PROVISION OF CONTACT INFORMATION.—  
17 The mortgagee or servicer of a covered federally re-  
18 lated mortgage loan shall provide, on each regular  
19 account statement for the loan, a toll-free or collect-  
20 call telephone number that provides the borrower  
21 with direct access to a person with the information  
22 and authority to answer questions and fully resolve  
23 issues related to loss mitigation activities for the  
24 loan.

1           “(2) PROHIBITION ON OUTSOURCING.—In car-  
2           rying out subsection (a) with respect to a covered  
3           federally related mortgage loan, any contact by or on  
4           behalf of a mortgagee or servicer with the home-  
5           owner and any processing of any loss mitigation ac-  
6           tivities shall be conducted only by agents of the  
7           mortgagee or servicer who are physically located in  
8           the United States.

9           “(h) THIRD-PARTY LOAN MODIFICATIONS.—The  
10          servicer or mortgagee of a covered federally related mort-  
11          gage loan shall not accept or provide loss mitigation activi-  
12          ties with respect to such loan at the request of any entity  
13          or individual that is not party to the loan unless—

14                 “(1) the entity or individual is authorized by  
15                 the borrower or mortgagee to act on behalf of the  
16                 borrower or mortgagor; and

17                 “(2)(A) is a representative of a housing coun-  
18                 seling agency approved by the Secretary of Housing  
19                 and Urban Development; or

20                 “(B) provides documentation to the servicer or  
21                 mortgagee that the entity or individual—

22                         “(i) has not charged any fee to the bor-  
23                         rower or mortgagor for such request; or

24                         “(ii)(I) has charged a nominal fee for such  
25                         request;

1           “(II) has entered into a written contract,  
2           in plain English or the primary language of the  
3           borrower or mortgagor, with the borrower or  
4           mortgagor, that includes provisions for cancella-  
5           tion without penalty; and

6           “(III) will refund any such fees to the bor-  
7           rower or mortgagor in the event the request for  
8           loss mitigation is denied.

9           “(i) DUTY TO REFER TO HUD-CERTIFIED HOUSING  
10          COUNSELING AGENCY.—

11           “(1) REFERRAL BY SERVICER OR MORT-  
12          GAGEE.—In the case of any payment due under a  
13          covered federally related mortgage loan that is more  
14          than 60 days late, the servicer or mortgagee shall  
15          forward to a housing counseling agency approved by  
16          the Secretary the contact information of the bor-  
17          rower.

18           “(2) EXPRESSION OF BORROWER PREF-  
19          ERENCE.—The borrower may communicate to the  
20          servicer or mortgagee a preference for a particular  
21          housing counseling agency approved by the Sec-  
22          retary—

23           “(A) in writing at the time of closing on  
24          the loan; or

1           “(B) in writing at any time during the  
2           term of the loan, including by conveyance of  
3           signed authorization form from the approved  
4           housing counseling agency of the borrower’s  
5           choice, which shall be transmitted by such agen-  
6           cy to the mortgagee or servicer.

7           “(3) REFERRAL RELATIONSHIP.—A mortgagee  
8           or servicer may establish a referral relationship with  
9           a housing counseling agency approved by the Sec-  
10          retary, but such relationship may not be exclusive  
11          and the mortgagee or servicer may not refuse to re-  
12          spond to qualified written requests and other com-  
13          munications from another housing counseling agency  
14          approved by the Secretary or any other agent that  
15          is authorized by the borrower.

16          “(j) PROHIBITION ON WAIVER OF RIGHTS.—A mort-  
17          gagee for a covered federally related mortgage loan may  
18          not—

19                 “(1) when engaging in loss mitigation activities  
20                 pursuant to subsection (a), require a borrower to  
21                 limit or waive the rights of such borrower to bring  
22                 any claims, defenses, demands, proceedings, actions,  
23                 or causes of action against the mortgagee or servicer  
24                 as a condition of accepting an offer of any loss miti-



1 gation activities, including any activities under sub-  
2 section (c); or

3 “(2) require the borrower to agree to arbitra-  
4 tion as a condition of receiving loan modification ac-  
5 tivities.

6 Any waiver or arbitration provision in a written agreement  
7 prohibited under this subsection shall be void and unen-  
8 forceable.

9 “(k) REPORTING ON LOSS MITIGATION ACTIVI-  
10 TIES.—

11 “(1) IN GENERAL.—Each mortgagee or servicer  
12 of a covered federally related mortgage loan shall re-  
13 port monthly and comprehensively to the Comp-  
14 troller of the Currency and to the Director of the  
15 Office of Thrift Supervision on the extent and scope  
16 of the loss mitigation activities of the mortgagee.  
17 Each such report shall include data on loss mitiga-  
18 tion activities disaggregated according to the cat-  
19 egories specified in each of the subparagraphs of  
20 paragraphs (6), (7), and (8) of subsection (c), any  
21 loss mitigation activities not covered by such cat-  
22 egories, the number of loans receiving loss mitiga-  
23 tion that have become performing loans, the number  
24 of loans receiving loss mitigation that have pro-  
25 ceeded to foreclosure, the total number of fore-

1 closures initiated during the reporting period, and  
2 such other information as the Comptroller or Direc-  
3 tor determines to be relevant.

4 “(2) COMPILATION OF AGGREGATE DATA.—

5 “(A) COMMENCEMENT.—Beginning with  
6 data for calendar year 2009, the Comptroller of  
7 the Currency and the Director of the Office of  
8 Thrift Supervision shall, in consultation, with  
9 the Chairman of the Federal Reserve compile  
10 for each year, for each primary metropolitan  
11 statistical area, metropolitan statistical area,  
12 and consolidated metropolitan statistical area  
13 that is not comprised of designated primary  
14 metropolitan statistical areas, aggregate data  
15 by census tract for each mortgagee or servicer  
16 that is required to disclose data under this sub-  
17 section.

18 “(B) SCOPE.—Each such report shall in-  
19 clude loan-level disclosures of outstanding loans  
20 with information related to—

21 “(i) the location of the security prop-  
22 erty;

23 “(ii) the loan amount;

24 “(iii) the value of such security prop-  
25 erty;

1           “(iv) the age of borrower or mort-  
2           gagee;

3           “(v) the date on which such loan was  
4           originated;

5           “(vi) the type of entity owning such  
6           loan;

7           “(vii) the performance status of such  
8           loan;

9           “(viii) the monetary losses incurred by  
10          the investor in such loan in connection  
11          with the termination of such loan;

12          “(ix) the loss mitigation activities pro-  
13          vided in reference to such loan according  
14          to the categories specified in each of the  
15          subparagraphs of paragraphs (6), (7), and  
16          (8) of subsection (c);

17          “(x) the loss mitigation activities pro-  
18          vided in reference to such loan that are not  
19          covered by such categories;

20          “(xi) the magnitude of such modifica-  
21          tion or loss mitigation activities;

22          “(xii) the dates of consideration, ap-  
23          proval, or rejection of such loss mitigation  
24          activities;

1 “(xiii) the reasons for such rejection;

2 and

3 “(xiv) any other relevant information.

4 Such reports shall also include information  
5 identical to that required upon loan origination  
6 by the Home Mortgage Disclosure Act of 1975.

7 “(C) DATA TABLES.—The Comptroller and  
8 the Director shall also produce tables indicating  
9 for each primary metropolitan statistical area,  
10 metropolitan statistical area, and consolidated  
11 metropolitan statistical area that is not com-  
12 prised of designated primary metropolitan sta-  
13 tistical areas, aggregate loss mitigation patterns  
14 for various categories of census tracts grouped  
15 according to location, age of housing stock, in-  
16 come level, and racial and ethnic characteris-  
17 tics.

18 “(D) AVAILABILITY TO PUBLIC.—The data  
19 and tables required pursuant to this paragraph  
20 shall be made available to the public not later  
21 than 6 months after such data is reported pur-  
22 suant to subparagraph (A).

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

1           “(1) ADJUSTABLE RATE MORTGAGE.—The term  
2           ‘adjustable rate mortgage’ means, with respect to a  
3           federally related mortgage loan, that the loan terms  
4           provide for the rate of interest charged under the  
5           loan to reset or adjust at least once during the term  
6           of the loan.

7           “(2) COVERED FEDERALLY RELATED MORT-  
8           GAGE LOAN.—The term ‘covered federally related  
9           mortgage loan’ means a federally related mortgage  
10          loan described in subsection (a).

11          “(3) MORTGAGEE.—The term ‘mortgagee’  
12          means, with respect to a federally related mortgage  
13          loan, the original lender under the loan and any af-  
14          filiates, agents, subsidiaries, successors, or assignees  
15          of such lender, and any subsequent purchaser, trust-  
16          ee, or transferee of the loan or credit instrument  
17          issued by such lender.

18          “(4) SERVICER.—The term ‘servicer’ has the  
19          meaning given such term in section 6(i).

20          “(m) REPORT TO CONGRESS.—Not later than the ex-  
21          piration of the 12-month period beginning upon the date  
22          of the enactment of the Foreclosure Prevention and Sound  
23          Mortgage Servicing Act of 2009, and of each consecutive  
24          12-month period thereafter, the Comptroller of the Cur-  
25          rency and the Director of the Office of Thrift Supervision

1 shall provide a report to the Congress on the extent of  
2 compliance by mortgagees and servicers with the require-  
3 ments of this section and paragraphs (4) through (7) of  
4 section 6(e).”.

5 (b) DUTY OF LOAN SERVICER TO RESPOND TO BOR-  
6 ROWER INQUIRIES.—Section 6(e)(1)A) of the Real Estate  
7 Settlement Procedures Act of 1974 (12 U.S.C.  
8 2605(e)(1)(A)) is amended by striking “borrower)” and  
9 inserting “(borrower, including a housing counseling agen-  
10 cy approved by the Secretary)”.

11 (c) COMPREHENSIVE DISCLOSURE AND FAIR PROC-  
12 ESSING OF QUALIFIED WRITTEN REQUESTS.—Section  
13 6(e) of the Real Estate Settlement Procedures Act of 1974  
14 (12 U.S.C. 2605(e)) is amended by adding at the end the  
15 following new paragraphs:

16 “(4) PROVISION OF INFORMATION REGARDING  
17 MORTGAGE.—The servicer of a covered federally re-  
18 lated mortgage loan (as such term is defined in sec-  
19 tion 6A(1)) shall have available at all times the fol-  
20 lowing information, which shall be provided to the  
21 borrower or borrower’s agent in response to a quali-  
22 fied written request by the borrower submitted in ac-  
23 cordance with the deadlines set forth in paragraph  
24 (1)(A):

1           “(A) Whether the account relating to such  
2 loan is current, or if not, the date the account  
3 went into default.

4           “(B) The current balance due on the loan,  
5 including the amount of principal due, an  
6 itemization of all fees due, an explanation of the  
7 escrow balance, and whether there are any es-  
8 crow deficiencies or shortages.

9           “(C) A full payment history that shows, in  
10 a clear and easily understandable manner, all of  
11 the activity on the loan since the origination of  
12 the loan, including the escrow account, and the  
13 application of payments made under the loan.

14           “(D) The initial terms of the loan.

15           “(E) A copy of the original note and secu-  
16 rity instrument.

17           “(F) Identification of the owner of the  
18 mortgage note and any investors in the note.

19           “(G) Any documents that limit, explain, or  
20 modify the loss mitigation activities offered by  
21 the servicer.

22           “(H) Any other information requested by  
23 the borrower that is reasonably related to loss  
24 mitigation activities.

1           “(5) PROHIBITION OF ‘WRONG DOOR’ ACTIONS  
2           FOR QUALIFIED WRITTEN REQUESTS.—All written  
3           communications from the mortgagee or servicer of a  
4           federally related mortgage loan to the borrower shall  
5           include the address for receipt and handling of  
6           qualified written requests. Any qualified written re-  
7           quest received by the mortgagee or servicer shall be  
8           valid notwithstanding receipt at any address other  
9           than that designated by the mortgagee or servicer  
10          for receipt and handling of such requests.

11          “(6) PROHIBITION OF FEE FOR RESPONSE TO  
12          QUALIFIED WRITTEN REQUESTS.—A mortgagee or  
13          servicer for a federally related mortgage loan may  
14          not impose any fee for, or on account of, the prepa-  
15          ration and submission by such mortgagee or servicer  
16          of any response or statement required by this sub-  
17          section.

18          “(7) PROHIBITION OF FORECLOSURE PENDING  
19          DISCLOSURE.—In the case of a covered federally re-  
20          lated mortgage loan (as such term is defined in sec-  
21          tion 6A(l)), no foreclosure proceeding may be initi-  
22          ated or continued against the borrower or the prin-  
23          cipal residence of the borrower during any period in  
24          which a qualified written request under this sub-  
25          section is pending and the mortgagee or servicer has



1 not complied with the requirements of this sub-  
2 section regarding the request.”.

3 (d) DAMAGES AND COSTS.—Section 6(f) of the Real  
4 Estate Settlement Procedures Act of 1974 (12 U.S.C.  
5 2605(f)) is amended—

6 (1) in the matter preceding paragraph (1), by  
7 inserting “or of section 6A” after “this section”;

8 (2) in paragraphs (1)(B) and (2)(B)—

9 (A) by striking “a pattern or practice”  
10 each place such term appears; and

11 (B) by striking “\$1,000” each place such  
12 term appears and inserting “\$2,000 for each  
13 violation”; and

14 (3) in paragraph (2)(B)(i), by striking  
15 “\$500,000” and inserting “\$1,000,000”.

16 (e) CONFORMING AMENDMENT.—Section 17 of the  
17 Real Estate Settlement Procedures Act of 1974 (12  
18 U.S.C. 2615) is amended by striking “Nothing” and in-  
19 serting “Except as provided in sections 6(e)(7) and 6A,  
20 nothing”.

21 **SEC. 3. DUTIES OF LENDERS AND LOAN SERVICERS.**

22 The Truth in Lending Act is amended by inserting  
23 after section 129A (15 U.S.C. 1639a) the following new  
24 section:

1 **“SEC. 129B. DUTIES OF LENDERS AND LOAN SERVICERS.**

2 “(a) STANDARD OF CARE.—

3 “(1) AGENCY RELATIONSHIP.—In the case of  
4 any home loan serviced by a loan servicer on behalf  
5 of a lender, the loan servicer shall be deemed an  
6 agent of that lender, and shall be subject to all re-  
7 quirements of agents otherwise applicable under  
8 Federal or State law.

9 “(2) FAIR DEALING.—Each lender and loan  
10 servicer shall, in addition to the duties imposed by  
11 otherwise applicable provisions of Federal or State  
12 law, with respect to each home mortgage loan, in-  
13 cluding any home mortgage loan in default or in  
14 which the homeowner has filed for bankruptcy—

15 “(A) act with reasonable skill, care, dili-  
16 gence, and in accordance with the highest  
17 standards; and

18 “(B) act in good faith and with fair deal-  
19 ing in any transaction, practice, or course of  
20 business associated with the home mortgage  
21 loan.

22 “(3) TRAINING AND COMPETENCY.—Each lend-  
23 er and loan servicer shall institute training, proce-  
24 dures, and standards to ensure that borrowers are  
25 treated fairly and competently.

26 “(b) RULES FOR ASSESSMENT OF FEE.—

1           “(1) IN GENERAL.—No home mortgage loan  
2 contract may require, nor may any lender or loan  
3 servicer assess or receive, any fees or charges other  
4 than interest, late fees as specifically authorized in  
5 this section, or fees assessed for nonsufficient funds,  
6 and charges allowed pursuant to subsection  
7 (h)(1)(B), until the home mortgage loan is the sub-  
8 ject of a foreclosure proceeding and the debt on such  
9 loan has been accelerated.

10           “(2) FEE LIMITATIONS.—Any permissible fee or  
11 charge described under paragraph (1) shall be—

12                   “(A) reasonable;

13                   “(B) for services actually rendered; and

14                   “(C) specifically authorized by the terms of  
15 the home mortgage loan contract and State law.

16           “(3) ASSESSMENT AND DISCLOSURE.—

17                   “(A) IN GENERAL.—Any permissible fee or  
18 charge described under paragraph (1) shall  
19 be—

20                           “(i) assessed not later than 30 days  
21 after the date on which the fee was ac-  
22 crued; and

23                           “(ii) explained clearly and conspicu-  
24 ously in the next monthly accounting state-

1                   ment provided to the borrower designated  
2                   in the home mortgage loan contract.

3                   “(B) FAILURE TO COMPLY.—Failure by a  
4                   lender or loan servicer to comply with the re-  
5                   quirements set forth under subparagraph (A)  
6                   shall result in the waiver of the fee.

7                   “(4) REQUIRED STATEMENTS.—Each month a  
8                   lender or loan servicer shall provide to each borrower  
9                   designated in a home mortgage loan contract en-  
10                  tered into by such lender or loan servicer a periodic  
11                  statement that clearly and in plain English ex-  
12                  plains—

13                  “(A) the application of the prior month’s  
14                  payment by the borrower, including the alloca-  
15                  tion of the payment to interest, principal, es-  
16                  crow, and fees;

17                  “(B) the status of the escrow account held  
18                  on behalf of the borrower, including the pay-  
19                  ments into and from the escrow account; and

20                  “(C) the assessment of fees accruing in the  
21                  previous month, including the reason that such  
22                  fee accrued and the date such fee accrued.

23                  “(c) MAXIMUM ALLOWABLE LATE FEES CHARGED  
24                  AFTER LOAN CLOSING.—

1           “(1) IN GENERAL.—No lender or loan servicer  
2           may impose a charge or fee for late payment of any  
3           amount due on a home mortgage loan—

4                   “(A) unless the home mortgage loan con-  
5                   tract specifically authorizes the charge or fee;

6                   “(B) in an amount in excess of 5 percent  
7                   of the amount of the payment past due;

8                   “(C) before the end of the 15-day period  
9                   after the date the payment is due, or in the  
10                  case of a home mortgage loan on which interest  
11                  on each installment is paid in advance, before  
12                  the end of the 30-day period after the date the  
13                  payment is due; or

14                  “(D) more than once with respect to a sin-  
15                  gle late payment.

16           “(2) RULE OF CONSTRUCTION.—For purposes  
17           of this subsection, payments on any amount due on  
18           a home mortgage loan shall be applied first to cur-  
19           rent installments, then to delinquent payments, and  
20           then to delinquency charges.

21           “(3) COORDINATION WITH SUBSEQUENT LATE  
22           FEES.—If a home loan mortgage payment is other-  
23           wise a full payment for the applicable period and is  
24           paid on its due date or within an applicable grace  
25           period, and the only delinquency or insufficiency of

1 payment is attributable to a late fee or delinquency  
2 charge assessed on an earlier payment, no late fee  
3 or delinquency charge may be imposed on such pay-  
4 ment.

5 “(d) PAYOFF STATEMENTS.—

6 “(1) PROHIBITION ON FEES.—

7 “(A) IN GENERAL.—No lender or loan  
8 servicer (or any third party acting on behalf of  
9 such lender or loan servicer) may charge a fee  
10 for transmitting to any borrower the amount  
11 due to pay off the outstanding balance on the  
12 home mortgage loan of such borrower.

13 “(B) EXCEPTION.—After a lender or loan  
14 servicer (or any third party acting on behalf of  
15 such lender or loan servicer) has provided the  
16 information described in subparagraph (A)  
17 without charge on 4 occasions during a cal-  
18 endar year, the lender or loan servicer (or any  
19 third party acting on behalf of such lender or  
20 loan servicer) may thereafter charge a reason-  
21 able fee for providing such information during  
22 the remainder of the calendar year.

23 “(2) TIMING.—The information described in  
24 subparagraph (A) shall be provided to the borrower  
25 within a reasonable period of time but in any event

1 not more than 5 business days after the receipt of  
2 the request by the lender or loan servicer.

3 “(e) CIVIL LIABILITY.—

4 “(1) IN GENERAL.—Any lender or loan servicer  
5 who fails to comply with any requirement of this sec-  
6 tion with respect to a borrower designated in a home  
7 mortgage loan contract, is liable to such borrower in  
8 an amount equal to the sum of—

9 “(A) any actual damages sustained by  
10 such borrower as a result of the failure;

11 “(B) an amount not less than \$5,000; or

12 “(C) in the case of any successful action to  
13 enforce the foregoing liability the costs of the  
14 action, together with a reasonable attorney’s fee  
15 as determined by the court.

16 “(2) JURISDICTION.—Any action by a borrower  
17 for a failure to comply with the requirements of this  
18 section may be brought in any United States district  
19 court, or in any other court of competent jurisdic-  
20 tion, not later than 3 years from the date of the oc-  
21 currence of such violation. This subsection does not  
22 bar a person from asserting a violation of this sec-  
23 tion in an action by a lender or loan servicer to col-  
24 lect the debt owed on a home mortgage loan, or fore-  
25 close upon the home securing a home mortgage loan,

1 or to stop a foreclosure upon that home, which was  
2 brought more than 3 years after the date of the oc-  
3 currence of the violation as a matter of defense by  
4 recoupment or set-off in such action. An action  
5 under this section does not create an independent  
6 basis for removal of an action to a United States  
7 district court.

8 “(3) STATE ATTORNEY GENERAL ENFORCE-  
9 MENT.—An action to enforce a violation of this sec-  
10 tion may also be brought by the appropriate State  
11 attorney general in any appropriate United States  
12 district court, or any other court of competent juris-  
13 diction, not later than 3 years after the date on  
14 which the violation occurs. An action under this sec-  
15 tion does not create an independent basis for re-  
16 moval of an action to a United States district court.

17 “(f) DEFINITIONS.—In this section, the following  
18 definitions shall apply:

19 “(1) LENDER.—The term ‘lender’ has the same  
20 meaning as in section 3500.2 of title 24, Code of  
21 Federal Regulations, as in effect on the date of en-  
22 actment of this section.

23 “(2) LOAN SERVICER.—The term ‘loan servicer’  
24 has the same meaning as the term ‘servicer’ in sec-



1       tion 6(i)(2) of the Real Estate Settlement Proce-  
2       dures Act of 1974 (12 U.S.C. 2605(i)(2)).”.

3 **SEC. 4. NOTICE OF TRANSFER OF LOAN SERVICING.**

4       Paragraph (3) of section 6(b) of the Real Estate Set-  
5       tlement Procedures Act of 1974 (12 U.S.C. 2605(b)(3))  
6       is amended by adding at the end the following new sub-  
7       paragraph:

8               “(H) A statement explaining—

9                       “(i) whether the account of the bor-  
10                      rower is current, or if the account is not  
11                      current, an explanation of the reason and  
12                      date the account went into default;

13                     “(ii) the current balance due on the  
14                     loan, including the principal due, an expla-  
15                     nation of the escrow balance, and whether  
16                     there are any escrow deficiencies or short-  
17                     ages; and

18                     “(iii) a full payment history of the  
19                     borrower which shows in a clear and easily  
20                     understandable manner, all of the activity  
21                     on the home mortgage loan since the origi-  
22                     nation of the loan or the prior transfer of  
23                     servicing, including the escrow account,  
24                     and the application of payments.”.

1 **SEC. 5. SERVICER COMPENSATION.**

2 Not later than the expiration of the 6-month period  
3 beginning on the date of the enactment of this Act, the  
4 Secretary of Housing and Urban Development and the  
5 Federal banking regulatory agencies shall, by regulation,  
6 establish and implement procedures and standards de-  
7 signed to ensure that the means and manner of compensa-  
8 tion of servicers of federally related mortgage loans is con-  
9 sistent with the purposes of this Act and the amendments  
10 made by this Act, and to the extent possible, does not pro-  
11 vide incentives for foreclosure of such mortgages or dis-  
12 incentives to engaging in reasonable loss mitigation activi-  
13 ties for such mortgages.

14 **SEC. 6. UNENFORCEABILITY OF POOLING AND SERVICING**  
15 **AGREEMENTS PROHIBITING MODIFICATION.**

16 Any provision of any investment contract entered into  
17 after the date of the enactment of this Act between a  
18 servicer of pooled residential mortgages and an investor  
19 that is inconsistent with this Act or the amendments made  
20 by this Act shall be considered to be contrary to public  
21 policy and void and unenforceable.

22 **SEC. 7. PILOT PROGRAM FOR COMMUNITY BANKS.**

23 The Secretary of the Treasury and the Secretary of  
24 Housing and Urban Development shall jointly carry out  
25 a pilot program to encourage the Federal National Mort-  
26 gage Association, the Federal Home Loan Mortgage Cor-

1 poration, and the Federal Home Loan Banks to enter into  
2 contracts for insured community development financial in-  
3 stitutions (as such term is defined in section 103 of the  
4 Community Development Banking and Financial Institu-  
5 tions Act of 1994 (12 U.S.C. 4702)), including minority-  
6 owned such institutions, to provide mortgage servicing  
7 with respect to mortgages owned or securitized by such  
8 Government-sponsored enterprises.

○