

111TH CONGRESS
1ST SESSION

S. 241

To amend the Truth in Lending Act to permit deferrals on certain home mortgage foreclosures for a limited period to allow homeowners to take remedial action, to require home mortgage servicers to provide advance notice of any upcoming reset of the mortgage interest rate, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 14, 2009

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

A BILL

To amend the Truth in Lending Act to permit deferrals on certain home mortgage foreclosures for a limited period to allow homeowners to take remedial action, to require home mortgage servicers to provide advance notice of any upcoming reset of the mortgage interest rate, 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 “Home Retention and
5 Economic Stabilization Act of 2009”.

1 **SEC. 2. FORECLOSURE DEFERMENT.**

2 (a) IN GENERAL.—Chapter 2 of the Truth in Lend-
 3 ing Act (15 U.S.C. 1631 et seq.) is amended by inserting
 4 after section 128 the following new section:

5 **“§ 128A. Foreclosure deferment and reset notification**
 6 **for mortgages**

7 “(a) DEFINITIONS.—For purposes of this section, the
 8 following definitions shall apply:

9 “(1) DEFERMENT PAYMENT AMOUNT.—The
 10 term ‘deferment payment amount’ means the
 11 amount of the monthly payment that is due on an
 12 eligible deferred-foreclosure mortgage during the
 13 deferment period.

14 “(2) DEFERMENT PERIOD.—The term
 15 ‘deferment period’ means the period that—

16 “(A) begins when the eligible consumer
 17 sends notice of the exercise of the deferral right
 18 under subsection (b)(1) with respect to an eligi-
 19 ble deferred-foreclosure mortgage to the cred-
 20 itor or servicer; and

21 “(B) ends on the earliest of the following
 22 applicable dates:

23 “(i) The date that is 270 days after
 24 the beginning of the period.

25 “(ii) The end of the 30-day period be-
 26 ginning on any due date for any deferment

1 payment (on such mortgage, in accordance
 2 with this section) which remains unpaid as
 3 of the end of such 30-day period.

4 “(iii) The date on which the creditor
 5 or servicer enters into a qualified loan
 6 modification with the consumer.

7 “(iv) The date on which the deferment
 8 is terminated by judicial order.

9 “(3) DEFERMENT PERIOD TRIGGER.—The term
 10 ‘deferment period trigger’ means the date on which
 11 the consumer becomes eligible for a deferment under
 12 subsection (b)(1) with respect to an eligible deferred-
 13 foreclosure mortgage and occurs on the earlier of—

14 “(A) the date of any adjustment or reset
 15 of the interest rate on such mortgage;

16 “(B) the date by which the consumer is 60
 17 days delinquent on mortgage payments; or

18 “(C) the date of the first increase in the
 19 minimum monthly payment due under such
 20 mortgage after the origination of such mort-
 21 gage.

22 “(4) ELIGIBLE DEFERRED-FORECLOSURE
 23 MORTGAGE.—The term ‘eligible deferred-foreclosure
 24 mortgage’ means a consumer credit transaction that

1 is secured by the principal dwelling of an eligible
2 consumer that—

3 “(A) was entered into before the date of
4 enactment of this section; and

5 “(B) has reached the deferment period
6 trigger.

7 “(5) ELIGIBLE CONSUMER.—The term ‘eligible
8 consumer’ means a consumer who—

9 “(A) is a mortgagor or borrower on an eli-
10 gible deferred-foreclosure mortgage;

11 “(B) has resided at the property secured
12 by such mortgage since the mortgage trans-
13 action was entered into and intends to reside at
14 such property at least until the end of the
15 deferment period;

16 “(C) has a current monthly income that,
17 when multiplied by 12, is less than 200 percent
18 of the area median annual income for the rel-
19 evant family size in the State in which the resi-
20 dence is located; and

21 “(D) during the deferment period, re-
22 sponds to reasonable inquiries from a creditor
23 or servicer with respect to an eligible deferred-
24 foreclosure mortgage.

25 “(6) QUALIFIED LOAN MODIFICATION.—

1 “(A) IN GENERAL.—The term ‘qualified
2 loan modification’ means a permanent, sustain-
3 able loan modification.

4 “(B) FDIC REGULATIONS.—Not later
5 than 60 days after the date of enactment of the
6 Home Retention and Economic Stabilization
7 Act of 2009, the Chairperson of the Federal
8 Deposit Insurance Corporation shall promulgate
9 rules establishing under what circumstances a
10 loan modification will qualify as permanent and
11 sustainable.

12 “(b) RIGHT TO DEFERMENT OF INSTITUTION OF OR
13 ACTION ON FORECLOSURE.—

14 “(1) RIGHT ESTABLISHED.—Any eligible de-
15 ferred-foreclosure consumer shall have the right to
16 defer any initiation of a foreclosure, whether judicial
17 or nonjudicial, or any action in connection with a
18 foreclosure already instituted, including any fore-
19 closure sale, with respect to any eligible deferred-
20 foreclosure mortgage by any creditor, servicer, or
21 holder of such mortgage, or any other person acting
22 on behalf of any such creditor, servicer, or holder,
23 until the end of the deferment period.

24 “(2) ENFORCEMENT OF RIGHT.—An eligible de-
25 ferred-foreclosure consumer may defend against a

1 foreclosure or bring an action in any court of com-
2 petent or general jurisdiction to compel compliance
3 with the right of the consumer under paragraph (1)
4 to defer any initiation of a foreclosure or any action
5 in connection with a foreclosure already instituted,
6 including any foreclosure sale, with respect to any
7 eligible deferred-foreclosure mortgage.

8 “(c) NOTICE TO CONSUMER BEFORE ANY FORE-
9 CLOSURE ACTION.—

10 “(1) NOTICE OF RIGHT REQUIRED.—Before ini-
11 tiating any foreclosure with respect to any eligible
12 deferred-foreclosure mortgage, the creditor or
13 servicer shall notify, by personal service, any eligible
14 deferred-foreclosure consumer with respect to such
15 mortgage of such consumer’s right under subsection
16 (b) to defer the initiation of foreclosure.

17 “(2) CONTENTS OF NOTICE.—The Board shall
18 prescribe, by regulations under sections 105 and
19 122, the content and format, including the size of
20 the font, of the notices under paragraph (1) in a
21 manner that maximizes the likelihood that the con-
22 sumer will obtain and understand all the information
23 necessary to exercise the right to defer any action to
24 institute foreclosure, including—

1 “(A) the manner and format for obtaining
2 such deferral, including a sample notice form,
3 an identification form, and a certification form
4 for the consumer to use in complying with sub-
5 section (d)(1);

6 “(B) contact information for the creditor
7 or servicer, as the case may be and any third
8 party involved in foreclosure proceedings, in-
9 cluding State or local officials; and

10 “(C) contact information for obtaining any
11 counseling concerning the exercise of such de-
12 ferral from a counselor approved by the appro-
13 priate State housing finance agency or the Sec-
14 retary of Housing and Urban Development.

15 “(3) TIMING.—No foreclosure action or pro-
16 ceeding with respect to any eligible deferred-fore-
17 closure mortgage shall be valid unless the creditor or
18 servicer has provided the notice required under this
19 subsection to the consumer at least 30 days before
20 instituting any such action or proceeding and at
21 least once during each subsequent 30-day period
22 until the foreclosure becomes final.

23 “(d) INSTITUTION OF DEFERMENT.—

24 “(1) PROCEDURE REQUIRED.—Any eligible de-
25 ferred-foreclosure consumer who chooses to exercise

1 a deferment right under subsection (b) shall pro-
2 vide—

3 “(A) notice of the exercise of such to the
4 servicer or other person described in the notice
5 to the consumer under subsection (e) by any
6 reasonable means including by mail, service
7 whether directly or to any agent, including at
8 the address of any registered agent;

9 “(B) a clear identification of the eligible
10 deferred-foreclosure consumer and the address
11 of the property securing the mortgage; and

12 “(C) a certification that at least 1 con-
13 sumer borrower with respect to such mortgage
14 resides at the property secured by such mort-
15 gage and intends to reside at such property at
16 least until the end of the deferment period.

17 “(2) SUFFICIENCY OF NOTICE.—

18 “(A) IN GENERAL.—Notice and delivery of
19 an affidavit under paragraph (1) may be made
20 by any reasonable means including by mail,
21 service whether directly or to any agent, includ-
22 ing at the address of any registered agent with
23 the secretary of state for the State in which the
24 property is located, or any attorney rep-
25 resenting the consumer, or by such means as

1 the terms of the mortgage or regulations pre-
2 scribed by the Board may provide.

3 “(B) OTHER PARTIES.—If any court, any
4 sheriff or other official designated under State
5 law, or any other person authorized under State
6 law and the contracts of the parties to maintain
7 any foreclosure proceeding or conduct any fore-
8 closure sale receives, directly or indirectly, a
9 copy of any notice provided under this sub-
10 section by an eligible deferred-foreclosure con-
11 sumer with respect to any eligible deferred-fore-
12 closure mortgage, no foreclosure action may be
13 taken by the court, sheriff, official, or other
14 person with respect to such mortgage during
15 the applicable deferred-foreclosure period.

16 “(3) ACKNOWLEDGMENT.—

17 “(A) IN GENERAL.—Any creditor, servicer,
18 or holder of an eligible deferred-foreclosure
19 mortgage, or any other person acting on behalf
20 of any such creditor, servicer, or holder, who re-
21 ceives a notice from a consumer under para-
22 graph (2) shall acknowledge to the consumer
23 the receipt of the notice of the exercise of the
24 deferment right under subsection (b) before the

1 end of the 10-business day period beginning on
2 the date of such receipt.

3 “(B) CONTENTS OF NOTICE.—The ac-
4 knowledgment provided to any eligible deferred-
5 foreclosure consumer under subparagraph (A)
6 shall include the date on which the next pay-
7 ment is due on the eligible deferred-foreclosure
8 mortgage, the deferment payment amount, the
9 date on which each subsequent payment is due,
10 and the address or the delivery method for each
11 such payment that is acceptable to the recipi-
12 ent.

13 “(4) MONTHLY PAYMENT NOTICES.—Each peri-
14 odic statement of account submitted by the creditor
15 or servicer with respect to any eligible deferred-fore-
16 closure mortgage during the period while any
17 deferment right under subsection (b) is in effect
18 shall include—

19 “(A) the due date and the amount of the
20 next payment due on such mortgage;

21 “(B) the address or the delivery method
22 for such payment;

23 “(C) the date on which the deferral of the
24 foreclosure will terminate; and

1 “(D) a notice that failure to make such
2 payment in a timely manner will jeopardize the
3 continuation of the deferral of the foreclosure.

4 “(e) DEFERMENT PAYMENT.—

5 “(1) IN GENERAL.—During the deferment pe-
6 riod with respect to any eligible deferred-foreclosure
7 mortgage for which any deferment right has been
8 exercised under subsection (b), monthly payments
9 shall continue to be made by the consumer with re-
10 spect to such mortgage.

11 “(2) AMOUNT OF PAYMENT.—The deferment
12 payment amount for purposes of monthly payments
13 under paragraph (1) with respect to any eligible de-
14 ferred-foreclosure mortgage shall be, as applicable,
15 the lesser of—

16 “(A) the minimum monthly payment of
17 principal and interest on the date on which the
18 loan was originated;

19 “(B) a monthly payment based on the out-
20 standing loan principal plus a rate of interest
21 calculated at a fixed annual percentage rate, in
22 an amount equal to the most recent conven-
23 tional mortgage rate plus a 100 basis point pre-
24 mium for risk, amortized over a period of 30

1 years minus the period of time since the origi-
2 nation of the loan; or

3 “(C) the amount of the first minimum
4 monthly payment due under the mortgage after
5 the origination of such mortgage.

6 “(3) AMORTIZATION OF DIFFERENCE.—The
7 difference between the amount of any monthly pay-
8 ment due under the terms of any eligible deferred-
9 foreclosure mortgage and the deferment payment
10 amount shall be amortized over the life of the mort-
11 gage beginning after the deferred-foreclosure period
12 in accordance with regulations which the Board shall
13 prescribe.

14 “(4) CHARGES PROHIBITED.—No creditor or
15 servicer may impose any late fee or other fee or
16 charge during the deferment period with respect to
17 any eligible deferred-foreclosure mortgage for which
18 any deferment right has been exercised under sub-
19 section (b) or in connection with the exercise of such
20 deferment right.

21 “(f) NOTICE OF RESET AND ALTERNATIVES.—Dur-
22 ing the 1-month period that ends 120 days before the date
23 on which the interest rate in effect during the introductory
24 period of an eligible deferred-foreclosure mortgage adjusts
25 or resets to a variable interest rate, or the minimum

1 monthly payment of principal and interest required first
2 increases from the amount of the first such minimum
3 monthly payment due under the mortgage after the origi-
4 nation of such mortgage, the creditor or servicer of such
5 loan shall provide a written notice, separate and distinct
6 from all other correspondence to the consumer, that in-
7 cludes the following:

8 “(1) Any index or formula used—

9 “(A) in determining the annual percentage
10 rate applicable as of the effective date of a reset
11 or adjustment; and

12 “(B) in making any increases in the min-
13 imum monthly payments due, and a source of
14 information about the index or formula.

15 “(2) A good faith estimate, based on accepted
16 industry standards and disclosed in a clear and con-
17 spicuous manner, of the creditor or servicer of the
18 amount of the monthly payment that will apply after
19 the date of the adjustment or reset, or increase, as
20 applicable, and the assumptions on which this esti-
21 mate is based.

22 “(3) A list of alternatives consumers may pur-
23 sue before the date of adjustment or reset, or in-
24 crease, as applicable, and descriptions of the actions

1 consumers must take to pursue such alternatives, in-
2 cluding—

3 “(A) refinancing;

4 “(B) renegotiation of loan terms;

5 “(C) payment forbearance;

6 “(D) pre-foreclosure sales;

7 “(E) any payment assistance available
8 from the State in which the property is located;
9 and

10 “(F) any refinancing, loan modification, or
11 other assistance program available through the
12 Federal Government that may apply to the
13 loan.

14 “(4) The names, addresses, telephone numbers,
15 and Internet addresses of counseling agencies or
16 programs reasonably available to the consumer that
17 have been certified or approved and made publicly
18 available by the Secretary of Housing and Urban
19 Development or a State housing finance authority
20 (as defined in section 1301 of the Financial Institu-
21 tions Reform, Recovery, and Enforcement Act of
22 1989).

23 “(5) The address, telephone number, and Inter-
24 net address for the State housing finance authority

1 (as so defined) for the State in which the consumer
2 resides.

3 “(g) MOST RECENT CONVENTIONAL MORTGAGE
4 RATE.—For purposes of subsection (f)(1)(A)(ii), the term
5 ‘most recent conventional mortgage rate’ means the con-
6 tract interest rate on commitments for fixed-rate first
7 mortgages most recently published in the Federal Reserve
8 Statistical Release on selected interest rates (daily or
9 weekly), and commonly referred to as the H.15 release (or
10 any successor publication), in the week preceding a date
11 of determination for purposes of applying this subsection.

12 “(h) DUTY OF CONSUMER TO MAINTAIN PROP-
13 ERTY.—Any eligible deferred-foreclosure consumer for
14 whom a deferment of foreclosure is in effect under this
15 section with respect to any eligible deferred-foreclosure
16 mortgage may not, with respect to any property securing
17 such mortgage, destroy, damage, or impair such property,
18 allow the property to substantially deteriorate, or commit
19 waste on the property.

20 “(i) DECLARATION OF RIGHTS.—In addition to the
21 right of any party to a mortgage to seek a declaratory
22 judgment under section 2201 of title 28, United States
23 Code, any such party may apply prior to the end of the
24 deferment period to any State court of competent or gen-
25 eral jurisdiction for an order establishing the rights, du-

1 ties, and conditions imposed on or applicable to any party
 2 to the mortgage, including the terms and conditions of a
 3 deferment.

4 “(j) COORDINATION WITH STATE LAW.—

5 “(1) IN GENERAL.—No provision of this section
 6 shall be construed as annulling, altering, or affecting
 7 the laws of any State relating to deferment of fore-
 8 closures, except to the extent that those laws are in-
 9 consistent with the provisions of this section, and
 10 then only to the extent of the inconsistency.

11 “(2) RULE OF CONSTRUCTION.—A State law is
 12 not inconsistent with this section if the protection
 13 that such law affords any consumer is greater than
 14 the protection afforded by this section.”.

15 (b) CLERICAL AMENDMENT.—The table of sections
 16 for chapter 2 of the Truth in Lending Act is amended
 17 by inserting after the item relating to section 128 the fol-
 18 lowing new item:

“128A. Foreclosure deferment and reset notification for certain mortgages.”.

19 **SEC. 3. HOUSING COUNSELING.**

20 (a) AUTHORIZATION OF APPROPRIATIONS.—There is
 21 authorized to be appropriated for fiscal year 2009,
 22 \$200,000,000 for the Neighborhood Reinvestment Cor-
 23 poration, for carrying out foreclosure mitigation activities
 24 under the terms and conditions contained in the second
 25 paragraph under the heading “Neighborhood Reinvest-

1 ment Corporation—Payment to the Neighborhood Rein-
2 vestment Corporation” in title III of division K of Public
3 Law 110–161 (121 Stat. 2441), which may include use
4 for costs of providing additional counselors, translators,
5 and other staffers and costs of providing additional com-
6 puters and improving databases and overall operations to
7 better assist mortgagor families.

8 (b) COUNSELING SERVICES.—Amounts made avail-
9 able under this Act may also be used by counseling inter-
10 mediaries approved by the Department of Housing and
11 Urban Development or the Neighborhood Reinvestment
12 Corporation to assist homeowners who have legal issues
13 directly related to the homeowner’s foreclosure, delin-
14 quency, or short sale, either by hiring attorneys directly
15 or by contracting with legal aid agencies experienced in
16 foreclosure work. Such attorneys or agencies shall be capa-
17 ble of assisting homeowners of owner-occupied homes with
18 mortgages in default, in danger of default, or subject to
19 or at risk of foreclosure and who have legal issues that
20 cannot be handled by counselors already employed by such
21 intermediaries.

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